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THE  
DECLARATION  
OF IOHN PYM *Esquire*,  
UPON  
THE WHOLE MATTER  
of the Charge of *High Treason*, against  
THOMAS  
EARLE OF STRAFFORD,  
APRIL 12. 1641.

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WITH  
AN ARGUMENT of Law, concerning  
the Bill of *Attainder of high Treason* of the said  
EARLE OF STRAFFORD,  
*Before a Committee of both houses of Parliament,*  
in WESTMINSTER Hall,  
By Mr. *St. Iohn* his Majesties Solicitor Generall,  
on *Thursday, April. 29. 1641.*

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*Both Published by Order of the Commons House.*

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Anno Domini. 1641.

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DECLARATION

OF JOHN LYNN & DAVID

UPON

THE WHOLE MATTER

of the Charge of High Treason against

THOMAS

EARLE OF STRAFFORD

APRIL 12. 1641.

WITH

AN ARGUMENT OF LAW, CONCERNING  
THE BILL OF ATTAINDER OF HIGH TREASON OF THE SAID

EARLE OF STRAFFORD,

Before a Committee of both Houses of Parliament,  
in WESTMINSTER HALL,

By M<sup>r</sup>. S. JONAS his Majesties Solicitor General,

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Anno Domini. 1641.



THE  
SPEECH  
OR  
DECLARATION  
OF  
JOHN PYM, Esq. &c.

MY LORDS,

Any dayes have beene spent in maintenance of the Impeachment of the Earle of Strafford, by the House of Commons, whereby hee stands charged with High Treason: And your Lordships have heard his Defence with Patience, and with as much favour as Justice would allow: We have passed through our Evidence, and the Result of all this is, that it remains clearly proved, That the Earle of Strafford hath endeavour'd by his words, actions, and counsell, to subvert the Fundamentall Lawes of England and Ireland, and to introduce an Arbitrary and Tyrannicall Government: This is the venom'd Arrow for which wee inquire in the beginning of his Replication this day, which hath infected all his Blood: This is that Intoxicating Cup, (to use his own Metaphor) which hath tainted his Iudgement, and poisoned his Heart:

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From hence was infused that Specificall Difference which turne his Speeches, his Actions, his Counsels into Treason: Not Cumulative, as he expresseth, as if many Misdemeanours could make one Treason: But Formally and Essentially, 'Tis the End that doth informe Actions, and doth specificke the Nature of them, making not onely criminal, but even innumerable words and actions to be Treason, being done and spoken with a Treasonable intention,

That which is given to mee in charge, is, to shew the quality of the offence, how painous it is in the nature, how mischievous in the effect of it, which will best appear, if it be examined by that Law, to which he himselfe appealed, that universall, that supream Law, *Salus populi*: This is the Element of all Lawes, out of which they are derived; the End of all Laws, to which they are designed, and in which they are perfected. How farre it stands in opposition to this Law, I shall endeavour to shew in some Considerations which I shall present to your Lordships, all arising out of the Evidence which hath beene opened.

I.

The first is this: It is an offence comprehending all other offences; here you shall finde severall Treasons, Murthers, Rapines, Oppressions, Perjuries.

The Earth hath a Seminary vertue; whereby it doth produce all Herbs and Plants, and other Vegetables: There is in this Chime, a Seminary of all Evils hurtfull to a State; and if you consider the Reasons of it, it must needs be so: The Law is that which puts a difference betwixt good and evil; betwixt just and unjust: If you take away this Law, all things will fall into a confusion, every man will become a Law to himselfe, which in the depraved condition of humane nature, must needs produce many great enormities: Lust will become a Law, and Envy will become a Law, Covetousnesse and Ambition will become Lawes; and what dictates, what decisions such Lawes will produce, may easily be discerned in the late Government of Ireland: The Law hath a power to prevent, to restrain, to repaire evils; without this, all kind of wickednes and disorders will breake in upon a State.

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is the Law that is the King's title to the Allegiance and service of his people, it intitles the people to the protection and justice of the King. It is God alone who sustains by himself all other things, but in a mutual dependence and relation it is as a civil man should, that the King is sustained by the people, that is, by the labour of the people that supports the Crowne. If you take away the protection of the King, the vigour and cheerfulness of Allegiance will be taken away though the Obligation remain.

The Law is the Boundary of the Measure due to the Kings Prerogative, and the peoples Liberty. While the King is in their owne Obedience, they are a support and security to one another. The Prerogative covers and defends the Liberty of the people, and the people by their Liberty are enabled to be a foundation to the Prerogative; but if these bounds be so removed, that they enter into contestation and conflict, one of these mischiefs must needs ensue, either the Prerogative of the King overwhelm the Liberty of the people, it will be turned into Tyranny; if Liberty undermine the Prerogative, it will grow into Anarchy.

The Law is the safeguard, the custody of all private interest: Your Honour, your Lives, your Liberties and estates are all in the keeping of the Law; without this every man hath a like right to any thing, and this is the condition into which the Irish were brought by the Earle of Strafford: And the reason which he gave for it, hath more mischief in it than the thing it selfe. They were a Conquered Nation; There cannot be a word more pregnant & fruitful in Treason than that word is. There are few Nations in the world that have not bin conquered; and no doubt but the Conqueror may give what Lawes he please to those that are conquered: But if the succeeding Pacts and Agreements doe not limit and restrain that right, what people can be secure? England hath been conquered, and Wales hath been conquered, and by this reason will be in little better case than Ireland. If the King by the Right of a Conqueror gives Lawes to his people, shall not the people by the same reason be restored to the right of the conquered, to recover their Liberty if they can? What can be more hurtfull, more pernicious to both, then such propositions as these?

And in these particulars it determined the first Consideration.

2. The Second Consideration is this: This Arbitrary power is dangerous to the Kings Person, and dangerous to his Crowne: It is apt to cherish ambition, usurpation, and oppression in great men, and to beget sedition and discontent in the People; and both these have bene, and in reason must ever be causes of great trouble and alteration to Princes and States.

If the Histories of those Easterne Countries be perused, where Princes order their affaires according to the mischievous principles of the Duke of Stratford, loose and absolute from all Rules of Government; they will be found to be frequent in combustions, full of massacres, and of the tragical ends of Princes. If any man shall looke into our owne Stories, in the times when the Lawes were most neglected, hee shall finde them full of Commotions, of Civill distempers; whereby the Kings that have reigned, were alwayes kept in want and distresse; the people consumed with Civill wars; and by such wicked counsels as these, some of our Princes have bene brought to such miserable ends, as no honest heart can remember without horror and earnest Prayer, that it may never be so againe.

3. The Third Consideration is this, The subversion of the Lawes; And this arbitrary power, as it is dangerous to the Kings Person and to his Crowne, so is it in other respects very prejudiciall to his Majesty in his Honour, Profit, and Greatnesse; and yet these are the guiding and guiding that are put upon such counsels; These are for your Honour, for your Service; whereas in truth they are contrary to both: But if I shall take off this varnish, I hope they shall then appeare in their owne native deformity, and therefore I desire to consider them by these Rules.

It cannot be for the Honour of a King, that his sacred authority should be used in the practise of injustice and oppression; that his Name should be applied to patronise such heinous crimes, as have bene represented in Evidence against the Duke of Stratford; and yet how frequently, how presumptuously his Commands, his Letters have bene vouched throughout the course of this Defence, your Lordships have heard.

Judges



Judges doe justice, it is the Kings Justice, and this is for his honour, because hee is the Fountaine of Justice: but when they doe injustice, the offence is their owne: But those Officers and Ministers of the King, who are most officious in the exercise of this Arbitrary power, they doe it commonly for their advantage: and when they are questioned for it, then they fly to the Kings interest, to his direction: And truly my Lords, this is a very unequal distribution for the King, that the dishonour of small courtes should be cast upon him, and they to have the advantage.

The prejudice which is brought to him in regard of his profit, is no lesse apparent: it deprives him of the most beneficiall, and most certaine Revenue of his Crowne, that is, the voluntary aide and supplies of his people; his other Revenues, consisting of goodly Demeanes, and great Manors, have by Grants beene alienated from the Crowne, and are now exceedingly diminished and impaired: But this Revenue it cannot be sold, it cannot be burdened with any Pensions or Annuities, but comes naturally to the Crowne: It is now almost fiftene yeeres since his Majesty had any assistance from his people; and these illegall wayes of supplying the King were never prest with more violence, and at, when they have beene in this time; and yet I may upon very good grounds affirme, that in the last fiftene yeeres of Queen Elizabeth, shee received more by the Bounty and Affection of her Subjects, then hath come to His Majesties Coffers by all the inordinate and rigorous courtes which have been taken. And as those Supplies were more beneficiall in the Receipt of them, so were they like in the use and employment of them.

Another way of prejudice to his Majesties profit, is this: Such Arbitrary courtes exhaust the people, and disable them, when there shall be occasion, to give such plentifull supplies, as otherwise they would doe. I shall need no other prooff of this, then the Irish Government under my Lord of Strafford, where the wealth of the kingdom is so consumed by these horrible exactions, and burdens, that it is thought the Subsidies lately granted will amount to little more then halfe the proportion of the last Subsidies. The two former wayes are hurtfull to the Kings profit.

he, in that respect which they call Intrusion, and the other  
 his receipts. But there is a third, full of mischief, and  
 it is in that respect which they call Dammino emergence, by in-  
 creasing his Disbursements: Such irregular and extravagant  
 attempts upon the Liberties of the people, are apt to produce  
 such miserable distractions and dissensions, as within the King  
 and Kingdomes to such vast expences and losses in a short time,  
 as will not be recovered in many yeeres. Wee made our goe  
 farre to seeke a prooffe of this, the two last yeeres will bee a  
 sufficient evidence, within which time I assure my selfe, may  
 be proved, that more Treasure hath beene wasted, more losse  
 sustained by his Maiesty, and his Subjects, when he was spent by  
 Queene Elizabeth in all the Wars of France, and such many  
 brave Attempts against the King of Spaine, and the rest of  
 France, which shee gave to France, and the Isle of Colchide, during  
 all her Reigne, and yett shee was never so much impoverished  
 as I am now. As for the greatnesse of this, I shall not  
 iniquity, but I shall showe you the Crowne, and the  
 As for the greatnesse of this, I shall not  
 impair it, not only at home, but abroad, in all the  
 society of men conuyned under one Government, for the com-  
 mon good: The World is, I should thinke, of Kingdomes and States.  
 The Kings greatnesse consists, not only in his Dominion over  
 his Subjects at home, but in the influence which he hath upon  
 States abroad: that hee should be great even among Kings,  
 and by his wisdoms and austere, for to incline and dispose the  
 affaires of other States and Nations, and those great events  
 which fall out in the World, as it shal be for the good of Man-  
 kind, and for the peculiar advantage of his owne people. This  
 is the most glorious and magnificent greatnesse, to be able to re-  
 lieve distressed Princes, to support his owne friends and Allies,  
 to prevent the ambitious designes of other Kings; and how much  
 this Kingdome hath bene impaired in this kinde, by the late  
 mischievous counsels, your Lordships best know, who at a  
 neere distance, and with a more cleare sight, doe appre-  
 hend these publique and great Affairs, then I can doe. Yet  
 thus much I dare boldly say, that if his Maiesty had not  
 with great willemesse and goodnesse, forsaken that way, wherein  
 the Earle of Straford had put him, wee should within a short  
 time have beene brought into that miserable condition, as to  
 have beene useless to our friends, contemptible to our enemies;

and

and incapable of undertaking any great Designe either at home or abroad.

A fourth Consideration is, That this Arbitrary and Tyrannicall Power, which the Earle of Strafford did exercise in his owne person, and to which he did advise his Majesty, is inconsistent with the Peace; the Wealth, the Prosperity of a Nation; It is destructive to Justice, the Mother of Peace; to Industry, the spring of Wealth; to Valour, which is the active vertue whereby the prosperity of a Nation can onely be procured, confirmed and enlarged.

It is not onely apt to take away Peace, and so intangle the Nation with Warres, but doth corrupt Peace, and puts such a malignity into it, as produceth the Effects of warre. We need seeke no other prooffe of this, but the Earle of Straffords Government, where the Irish, both Nobility and others, had as little security of their Persons or Estates in this peaceable time, as if the Kingdome had beene under the rage and fury of warre.

And as for Industry and Valour, who will take paines for that, which when hee hath gotten, is not his owne? Or who fight for that wherein he hath no other interest, but such as is subject to the will of another? The Ancient encouragement to men that were to defend their Countries was this, That they were to hazard their Person, pro Aris & Focis, for their Religion, and for their Houses; But by this Arbitrary way which was practised in Ireland, and counselled here, no man had any certainty, either of Religion, or of his House, or any thing else to be his owne; But besides this, such Arbitrary courses have an ill operation upon the courage of a Nation, by embasing the hearts of the people: A servile condition doth for the most part beget in men a slavish temper and disposition. Those that live so much under the Whip and the Pillory, and such servile Engines, as were frequently used by the Earle of Strafford, they may have the dregs of valor, sullennesse, and stubbornnesse, which may make them prone to Mutinies, and discontents; but those Noble and gallant affections, which put men on brave Designs and Attempts for the preservation or enlargement of a Kingdome, they are hardly capable of. Shall it be Treason to embase the Kings Coyne, though but a piece

of twelve-pence, or six-pence, and must it not needs be the effect of a greater Treason, to embase the spirits of his Subjects, and to set a stamp and Character of servitude upon them, whereby they shall be disabled to doe any thing for the service of the King or Common-wealth?

The fifth Consideration is this, That the exercise of this Arbitrary Government, in times of sudden danger, by the invasion of an enemy, will disable his Majesty to preserve himselfe and his Subjects from that danger. This is the only pretence by which the Earle of Strafford, and such other mischievous Counsellours would induce his Majesty to make use of it; and if it be unfit for such an occasion, I know nothing that can be alledged in maintenance of it.

When warre threatens a Kingdome by the comming of a forraigne Enemy, it is no time then to discontent the people, to make them weary of the present Government, and more inclinable to a Change; The supplies which are to come in this way, will be unready, uncertain; there can be no assurance of them, no dependence upon them, either for time or proportion: And if some money be gotten in such a way, the Distractions, Divisions, Distempers, which this course is apt to produce, will be more prejudiciall to the publique safety, than the supply can be advantageous to it; and of this we have had sufficient experience the last Summer.

The sixth, That this crime of subverting the Lawes, and introducing an Arbitrary and Tyrannicall Government, is contrary to the Pact and Covenant betwixt the King and his people. That which was spoken of before, was the legall union of Allegiance and Protection; this is a personall union by mutuall agreement and stipulation, confirmed by oath on both sides: The King and his people are obliged to one another in the neereft relations; He is a Father, and a childe is called in Law, *Pars Patris*: He is the Husband of the Common-wealth, they have the same interests, they are inseparable in their condition, be it good or evill; He is the Head, they are the Body; there is such an incorporation as cannot be dissolved without the destruction of both.

When



When Justice Thorpe, in Edward the thirds time, was by the parliament condemned to death for Bribery, the reason of that judgement is given, because he had broken the Kings Oath, not that he had broken his owne oath, but that hee had broken the Kings oath, that solemne and great obligation, which is the security of the whole Kingdome: If for a Iudge to take a small summe in a private cause, was adjudged Capitall, how much greater was this offence, whereby the Earle of Strafford hath broken the Kings Oath in the whole course of his Government in Ireland, to the prejudice of so many of his Majesties Subjects, in their Lives, Liberties, and Estates, and to the danger of all the rest?

The Doctrine of the Papists, *Fides non est servanda cum Hæreticis*, is an abominable Doctrine: yet that other Tenet more peculiar to the Iesuites is more pernicious, whereby Subjects are discharged from their oath of Allegiance to their Prince whensoever the Pope pleaseth; This may be added to make the third no lesse mischievous and destructive to humane society, then either of the rest; That the King is not bound by that oath which he hath taken to observe the Lawes of the Kingdome, but may when hee sees cause, lay Taxes and Burthens upon them without their consent, contrary to the Lawes and Liberties of the Kingdome. This hath beene preached and published by divers; And this is that which hath beene practised in Ireland by the Earle of Strafford, in his Government there, and endeavoured to be brought into England, by his Counsell here,

The seventh is this; It is an offence that is contrary to the end of Government; The end of Government was to prevent oppressions; to limit and restraints the excessive power and violence of great men, to open the passages of Justice with indifferency towards all; This Arbitrary power is apt to induce and encourage all kinde of insolencies.

Another end of Government, is to preserve men in their Estates, to secure them in their Lives and Liberties; but if this Designe had taken effect, and could have beene settled in England, as it was practised in Ireland, no man would have had more certainty in his owne, then power would have allowed him: but these two have been spoken of before, there are two behind more important, which have not yet been touched.

It is the end of Government, that vertue should be cherish, vice suppress; but where this Arbitrarie and unlimited power is set up, a way is open not onely for the securitie, but for the advancement and incouragement of evill; Such men as are aptest for the execution and maintenance of this Power, are onely capable of preferment; and others who will not be instruments of any unjust commands, who make a conscience to doe nothing against the Lawes of the Kingdome, and Liberties of the Subject, are not onely not passable for imploiment, but subject to much jealousie and danger.

It is the end of Government, that all accidents and events, all Counsels and Designes should be improved to the publique good: But this Arbitrarie Power is apt to dispose all to the maintenance of it selfe. The wisdom of the Councell Table, the Authoritie of the Courts of Iustice, the industrie of all the Officers of the Crowne have beene most carefullie exercised in this; the Learning of our Divines, the Iurisdiction of our Bishops have beene moulded and disposed to the same effect, which though it were begun before the E. of Straffords Imploiment, yet it hath beene exceedingly furthered and advanced by him.

Vnder this colour and pretence of mainraining the Kings Power and Prerogative manie dangerous practises against the peace and safetie of this Kingdome have beene undertaken and promoted. The increase of Poperie, and the favours and incouragement of Papists have beene, and still are a great grievance and danger to the Kingdome: The Innovations in matters of Religion, the usurpations of the Clergie, the manifold burdens and taxations upon the people, have beene a great cause of our present distempers and disorders; and yet those who have beene chiefe Furtherers and Actors of such Mischiefes, have had their Credit and Authority from this. That they were forward to maintaine this Power. The E. of Strafford had the first rise of his greatnesse from this, and in his Apologie and Defence, as your Lordships have heard, this hath had a maine part.

The Royall Power and Majestie of Kings, is most glorious in the

the prosperitie and happinesse of the people; the perfection of all things consists in the end for which they were ordained, God onely is his owne end, all other things have a further end beyond themselves, in attaining whereof their owne happinesse consists: If the meanes and the end be set in opposition to one another, it must needs cause an impotency and defect of both.

The eight Consideration is, The vanitie and absurdity of those excuses and justifications which he made for himselfe, whereof divers particulars have been mentioned in the course of his Defence.

8.

I. That he is a Counsellor, and might not be questioned for any thing which he advised according to his conscience; The ground is true, there is a liberty belongs to Counsellors, and nothing corrupts Counsels more then Fear; Hee that will have the priviledge of a Counsellor, must keepe within the just bounds of a Counsellor; those matters are the proper subiects of Counsell, which in their times and occasions, may be good or beneficiall to the King or Common-wealth; But such treasons as these, the subversion of the Lawes, violation of Liberties, they can never be good, or iustificable by any circumstance, or occasion; and therefore his being a Counsellor, makes his fault much more hainous, as being committed against a greater Trust, and in a way of much mischief and danger, lest his Maiesties conscience and judgement (upon which the whole course and frame of his Government doe much depend) should be poysoned and infected with such wicked principles and designes: And this hee hath endeavoured to doe, which by all Lawes, and in all times hath in this Kingdome bene reckoned a Crime of an High Nature.

2. Hee labours to interest your Lordships in his cause, by alledging, It may be dangerous to your selves, and your Posterity, who by your birth are fittest to be neare his Maiesty, in places of trust and Authority, if you should be subiect to be questioned for matters delivered in Counsell. To this was answered, that it was hoped their Lordships would rather Labour to secure themselves, and their posteritie, in the exercise of their vertues, then of their vices, that so they might together

with their owne honour and greatnesse, preserve the honour and greatnesse, both of the King and kingdome.

3. Another excuse was this, that whatsoever he hath spoken was out of a good intention ; Sometimes good and evil, truth and falshood lie so neare together, that they are hardly to be distinguished : Matters hurtfull and dangerous may be accompanied with such circumstances as may make it appeare usefull and convenient, and in all such cases, good intention will justifie evill Counsell ; But where the matters propounded are evill in their owne nature, such as the matters are wherewith the Earle of Strafford is charged, to breake a publique faith, to subvert Laws and Government, they can never be justified by any intentions, how speeches, or good soever they be pretended.

4. Hee alledgeth it was a time of great necessitie and danger, when such counsells were necessarie for preservation of the State. Necessitie hath beene spoken of before, as it relates to the Cause ; now it is considered as it relates to the Person ; if there were any necessitie, it was of his owne making ; he by his evill counsell had brought the King into a necessitie, and by no Rules of Justice, can be allowed to gaine this advantage by his owne fault, as to make that a ground of his justification, which is a great part of his offence.

5. He hath often insinuated this, That it was for his Majesties service in maintenance of that Sovereigne Power with which he is intrusted by God for the good of his people. The Answer is this, No doubt but that Sovereigne Power wherewith his Majestic is intrusted for the publique good, hath many glorious effects, the better to inable him thereunto ; But without doubt this is none of them, That by his owne will he may lay any Taxe or Imposition upon his people without their consent in Parliament. This hath now been five times adjudged by both Houses : In the Case of the Loanes, In condemning the Commission of Excise, In the Resolution upon the Saving offered to be added to the Petition of Right, In the sentence against Manwaring, and now lately, In condemning the Shipmoney ; And if the Sovereigne power of the King can produce no such effect as this, the Allegation of it is an Aggravation, and no Diminution of his offence,



offence, because thereby he doth labour to interest the King against the just grievance and complaint of the People.

6. This Counsell was propounded with divers limitations, and Provisions ; for securing and repairing the libertie of the people. This implies a contradiction to maintaine an Arbitrary and absolute Power, and yet to restraints it with limitations, and provisions ; for even those limitations and provisions will be subject to the same absolute Power, and so be dispensed in such manner, and at such time, as it selfe shall determine ; let the grievances and oppressions be never so heavy, the Subject is left without all remedie, but at his Majesties owne pleasure.

7 He alledgeth, they were but words, and no effect followed : This needs no answer, but that the miserable distempers into which he hath brought all the three Kingdomes, will be evidence sufficient that his wicked Counsels have had such mischievous effects within these two or three last yeeres, that many yeeres peace will hardly repaire those losses, and other great mischiefs which the Common-wealth hath sustained.

These excuses have been collected out of the severall parts of his Defence ; perchance some others are omitted, which I doubt not have beene answered by some of my Collegues, and are of no importance, either to perplex or to hinder your Lordships judgement, touching the hainousnesse of this Crime.

The ninth Consideration is this, That if this be Treason, in the nature of it, it doth exceed all other Treasons in this, that in the Designe, and endeavour of the Author, it was to be a constant & permanent Treason ; other Treasons transient, as being confinde within those particular Actions and Proportions wherein they did consist, and those being past, the Treason ceaseth.

The Powder-treason was full of horror and malignity, yet it is past many yeeres since ; The murder of that Magnanimous and glorious King, Henry the fourth of France, was a great and horrid Treason ; And so were those manifold attempts against Qu. Elizabeth of blessed memory ; but they are long since past, the Detestation of them onely remaines in Histories, and in the minds.

minds of men; and will ever remaine; But this Treason, if it had taken effect, was to be a standing, perpetuall Treason, which would have beene in continuall act, not determined within one time or age, but transmitted to Posterity, even from one generation to another.

10.

The tenth consideration is this, That as it is a Crime odious in the nature of it, so it is odious in the judgement and estimation of the Law; to alter the settled frame and constitution of Government, is Treason in any estate; The Lawes whereby all other parts of a Kingdome are preserved, should be very vaine and defective, if they had not a power to secure and preserve themselves.

The forfeitures inflicted for Treason by our Law, are of Life, Honor, and Estate, even all that can be forfeited, and this Prisoner having committed so many Treasons, although he should pay all these forfeitures, will be still a Debtor to the Common-wealth: Nothing can be more equall, then that hee should perish by the Justice of that Law which hee would have subverted; Neither will this be a new way of blood; There are markes enough to trace this Law to the very originall of this Kingdome: And if it hath not beene put in execution, as he allegeth, this 240. yeers, it was not for want of Law, but that all that time hath not bred a man bold enough to commit such Crimes as these; which is a circumstance much aggravating his offence, and making him no whit less liable to punishment, because he is the onely man that in so long a time hath ventured upon such a Treason as this.

It belongs to the charge of another to make it appeare to your Lordships, that the Crimes and offences proved against the Earle of Strafford, are High Treason by the Lawes and Statutes of this Realme, whose learning and other abilities are much better for that service. But for the time and manner of performing this, we are to resort to the Direction of the House of Commons, having in this which is already done, dispatched all those instructions which we have received; and concerning further proceedings, for clearing all Questions and Objections in Law, your Lordships will heare from the House of Commons in convenient time.

**F I N I S.**

AN  
ARGUMENT  
OF  
LAW

CONCERNING  
The BILL of ATTAINDER  
OF  
High-Treason  
OF  
THOMAS  
Earle of *Strafford* :

At a Conference in a Committee  
of both Houses of Parliament.

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By M<sup>r</sup>. S<sup>r</sup>. JOHN his *Majesties* Solicitor  
GENERAL.

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LONDON,  
Printed *Anno Domini* 1641.

AN  
ARGUMENT  
OF  
LAW

CONCERNING  
The Bill of Attainder  
OF  
High-Treason  
OF  
THOMAS  
Earl of Stafford:

As a Conference in a Committee  
of both Houses of Parliament.

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By M<sup>r</sup>. St. John his Majesty's Solicitor  
GENERAL.

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LONDON,  
Printed Anno Domini 1841.



# M<sup>r</sup>. ST. JOHN'S

## Argument.

*My Lords,*

**H**E Knights, Citizens, and Burgesſes of the Commons Houſe of Parliament have paſſed a Bill for the attainting of *Thomas Earle of Strafford* of High-Treaſon. The Bill hath bene tranſmitted from them to your Lordſhips: It concernes not him alone, but your

Lordſhips and the Commons too, though in different Reſpects. It is to make him as miſerable a man, as man or Law can make him.

Not loſſe of life alone, but with that, of honour, name, poſterity, and eſtate; Of all that's deare to all.

To uſe his owne expreſſion, an eradication of him both root and branch, as an *Achan*, a troubler of the State, as an execrable, as an accuſed thing.

This Bill, as it concernes his Lordſhip, the higheſt that can be in the penal part, ſo doth it on the other ſide as highly concerne your Lordſhips and the Commons in that which ought to be the tendreſt, the Judicatory within, that that judge not them who judge him: And in that which is moſt ſacred amongſt men, the publick Juſtice of the Kingdome.

The Kingdome is to be accounted unto for the loſſe of the meaneſt member, much more for one ſo neare the head.

The Commons are concerned in their Account for what is done, your Lordſhips in that which is to be done.

The buſineſſe therefore of the preſent Conference, is to acquaint your Lordſhips with thoſe things that ſatisfied the Commons in paſſing of this Bill, ſuch of them as have come

within my capacity, and that I can remember; I am commanded from the Commons at this time to present unto your Lordships.

My Lords, in Judgements of greatest moment, there are but two wayes for satisfying those that are to give them, Either the *Lex lata*, the Law already established, Or else the use of the same power for making new Lawes, whereby the old at first received life.

In the first consideration, of the settled Lawes; In the degrees of punishment the positive Law received by generall consent, and for the common good is sufficient to satisfy the conscience of the Judge in giving judgement according to them.

In severall Countreyes there is not the same measure of punishment for one and the same offence. Willfull murder in *Ireland* is Treason, and so is the willfull burning of a house or stack of Corne. In the Isle of *Man*, it's felony to steale a Hen, but not to steale a Horse; and yet the Judge in *Ireland* hath as just a ground to give judgement of high Treason in those Cases there, as here to give judgement only of felony, and in the Isle of *Man* of felony for the Hen, as here of petty Lacerny.

My Lords, in the other consideration of using the Supream power, the same Law gives power to the Parliament to make new Lawes, that enables the inferiour Court to judge according to the old. The rule that guides the conscience of the Inferiour Court is from without, the precripts of the Parliament and of the Common Law; in the other the rule is from within; That *salus populi* be concerned; That there be no willfull oppression of any the fellow members, that no more blood be taken than what is necessary for the Cure, the Laws and Customes of the Realme as well enable the exercise of this, as of the ordinary and judiciall power.

My Lords, what hath beene said, is because that this proceeding of the Commons by way of Bill, implies the use of the meere *Legislative* power, in respect new Lawes are for the most part past by Bill.

This, my Lords, though just and Legall, and therefore not wholly excluded, yet it was not the only ground that put the Commons,

Commons upon the Bill, they did not intend to make a new Treason, and to condemne my Lord of *Strafford* for it, they had in it other Considerations likewise, which were to this effect.

1 First, the Commons knew that in all former ages, if doubts of Law arose upon cases of great and generall Concernment; the Parliament was usually consulted withall for resolution, which is the reason that many Acts of Parliament are only declarative of the Old Law, not introductive of a new, as the great Charter of our Liberties; the Statute of the five and twentieth yeere of *Edward* the third, of Treasons; the Statute of the Prerogative, and of late the petition of right. If the Law were doubtfull in this Case, they conceived the Parliament (where the old may bee altered, and new Lawes made) the fittest Judge to cleare this doubt.

2 Secondly, my Lords, they proceeded this way to out those scruples and delays, which through dis-use of proceedings of this nature might have risen in the manner and way of proceeding, since the Statute of the first of *Henry* the fourth, the seventeenth chapter, and more fully in the Ro<sup>l</sup>. number 141. The proceedings in Parliament have usually beene upon an Inditement first found, though in Cases of Treason particularly mentioned in the Statute of the five and twentieth yeere of *Edward* the third, which had not beene done in this Case: Doubts likewise might rise from Treasons, not particularly mentioned in the Statute of 25. *Edw.* 3. whether the declaratory power of Parliament be taken away, and if not taken away, in what manner they were to be made, and by whom. They finde not any Attainders of Treason in Parliament for neere this 200 yeeres, but by this way of Bill. And againe, they knew that whatsoever could be done any other way, it might be done by this.

3 Thirdly, in respect of the proofes and depositions that have beene made against him; for first, although they knew not but that the whole Evidence which hath beene given at the Barre, in every part of it is sufficiently comprehended within the Charge, yet if therein they should be mistaken, if it should prove otherwise, use may justly be made of such Evidence in this way of Bill, wherein so as Evidence be given in, it's no



way requisite that there should have bene any Articles or Charge at all. And so in the Case of double Testimony upon the Statute of the first of Edward the sixth, whether one direct witnesse with others to Circumstances, had bene single or double Testimony; and although single Testimony might be sufficient to satisfie private Consciences, yet how farre it would have bene satisfactory in a judicall way where formes of Law are more to be stood upon, was not so cleare; whereas in this way of Bill private satisfaction to each mans Conscience is sufficient, although no evidence had been given in at all.

My Lords, the proceeding by way of Bill, it was not to decline your Lordships Justice in the judicall way; In these Exegercies of the State and Kingdome, it was to husband time by silencing those doubts: they conceived it the speediest and the surest way.

My Lords, These are in effect the things the Commons tooke into their Consideration, in respect of the manner, and way of proceeding against the Earle. In the next place I am to declare unto your Lordships, the things they tooke into their Consideration, in respect of the matter and merits of the Cause; They are comprehended within these six heads.

1. That there is a Treason within the Statute of 25. E. 3. by Levying of warre upon the matter of the fifteenth Article.

2. If not by actuall levying of war, yet by advising and declaring his intention of war, and that by *Savills* warrant, and the advice of bringing over the Irish Army, upon the matter in the 23. Article; The intending of a Warre, if not within the Clause of Levying Warre in the Statute of 25. E. 3. yet within the first Treason of compassing the death of the King.

3. If neither of these two single Acts be within the Statute of 25. E. 3. yet upon putting all together, which hath bin proved against him, That ther's a Treason within the first clause of compassing the death of the King.

*Es si non profuerit singula, juncta juvant.*

4. That he hath killed and laid Souldiers upon the Subjects of Ireland against their will, and at their Charge, within the Irish Statute, of the eighteenth yeare of Henry the sixth. That both person and thing are within the Statute, That the Statute remains in force to this day, That the Parliament here hath

Cogni-



Cognizance of it. And that even in the ordinary way of Judicature, that if there be a Treason and a Traitor, that the want of jurisdiction in the Judicall way, may justly be supplied by Bill.

5. That his endeavouring to subvert the fundamentall Lawes and Governement of the Realmes of *England* and *Ireland*, and instead thereof, to introduce a tyrannicall Government against Law, is Treason by the Common Law. That Treasons at the Common Law are not taken away by the Statutes of 25, E. 3. 1. H. 4. c. 10. 1. Mar. c. 1. nor any of them.

6. That as this Case stands, its just and necessary to resort to the Supream power in Parliament, in case all the rest should faile.

Of these six five of them are Treason, within the Compasse of the Lawes already established, Three within the Statute of 25 E. 3. One within the *Irish* Statute, the other by the Common Law of *England*.

If but any one of these six Considerations should, The Commons conceive that upon the whole matter they had good cause to passe the Bill.

My Lords, for the first of levyng Warre, I shall make bold to read the Case to your Lordships before I speake to it; its thus:

The Earle did by warrant under his hand and Seal give authority to *Robert Savill* a Serjeant at Arms, and his Deputies, to fesse such number of Souldiers, horse and foote of the Army in *Ireland* together with an officer, as the Serjeant should think fit, upon his Majesties Subjects of *Ireland* against their will: This warrant was granted by the Earle to the end to compell the Subjects of *Ireland* to submit to the unlawfull Summons and orders made by the Earle upon paper Petitions exhibited unto him in case of private Interest betweene party and party: This warrant was executed by *Savill* and his Deputies by fessing of Souldiers both horse and foote, upon divers of the Subjects of *Ireland* against their will in war-like manner, at divers times the Souldiers continued upon the parties upon whom they were fessed, and wasted their goods, untill such time as they had submitted themselves unto those Summons and orders.

My

My Lords, This is a levying of warre within the Statute of 25. E. 3. The words of the Statute are, *If any man doe levy warre against our Lord the King in his Realm*, this is declared to be Treason.

I shall endeavour in this to make it appeare to your Lordships.

1 What shall be a levying of Warre, in respect of the motive or cause of it.

2 What shall be said a levying of warre in respect of the Action or thing done.

3 And in the third place, I shall apply them to the present Case.

It shall be granted in this of levying of warre, That forces are raised and likewise used in a warre-like manner, and yet no levying of warre within the Statute, that is, when the forces are raised and employed upon private ends either of revenge or interest.

Before this Statute in E. 1. time. The Title of a Castle was in difference between the Earles of *Heraford* and *Gloster*, for the mainetaining of the possession on the one side, and gayning of it on the other, Forces were raised on either side of many hundred men, they marched with Banners displayed one against the other. In the Parliament in the 20. yeere of *Edw. 1.* this adjudged onely trespassse, and either of the *Earles* fined 1000. markes a peece.

After the Statute in Hillary Terme, the fiftieth yeere of *Edward* the third, in the *Kings Bench*, Rot. 3. *Nicholas Hamster* come in a war-like manner, with 40 men armed, amongst other weapons, with Gunnes (so ancient as appeares by that Record they were) did much spoyle in the Mannour of the *Abbe* of *Dorchester*, in the County of *Oxford*. This no Treason! So it hath beene held by the Judges, that if one or more Townships upon pretence of saving their Commons, doe in a forcible and war-like manner, throwne in Inclosures; This is only a Riot, no Treason.

The words of the Statute of 25. *Edw. 3.* cleare this Point, that if any man ride armed openly or secretly with men at Armes against any other to kill and robbe, or to detain him untill he hath made fine and rancome for his deliverance; this

is declared not to be Treason, but Felony or Trespass, as the case shall require, all the printed Statutes which have it covertly or secretly by a mis-press for the words in the Parliament Roll, as appears in 17. are *Discoverment or seizurement* openly or secretly.

So that my Lords, in this of levying warre, the Act is not so much to be considered, but as in all other Treasons and Felonies, *quod animo*, with what intent and purpose.

*Obj.* My Lords, If the end be considerable in levying war; it may be said, that it cannot be a Treason warre, unlesse against the King: For the wordes of the Statute are, *If any man levy warre against the King.*

*Ans.* That these words extend further then to the Person of the King, appears by wordes of the Statute, which in the beginning declares it to be Treason to compass and imagine the Kings death, & after other Treasons, this is to be declared to be Treason to levy war against the King. If the levying of war extend no further then to the person of the King, these wordes of the Statute are to no purpose, for then the first Treason of compassing the Kings death had fully included it before, because that he which levyes warre against the person of the King doth necessarily compass his death.

Its a warre against the King when intended for alteration of the Lawes or Government in any part of them, or to destroy any of the great Officers of the Kingdome. This is a levying of Warre against the King.

1 Because the King doth protect and maintaine the Lawes in every part of them, and the great Officers to whose care he hath in his own Reede delegated the Execution of them.

2 Because they are the Kings Lawes, He is the Fountaine from whence in their severall Chennels, they are derived to the Subject, all our inditements run thus, *Trespases laied to be done, Contra pacem Domini Regis*, the Kings peace for exorbitant offences, though not intended against the Kings Person, against the King his Crowne and Dignity.

My Lords, this construction is made good by diverse Authorities of great weight ever since the statute of 25. E. 3. down-wards.

In the 10. time Sir Thomas Talbot conspired the death of the Dukes of Gloucester and Lancaster, & some other of the Peeres, for the effecting of it, he had caused diverse people in the County of Chester to be armed in warre-like manner, in Assemblies. In the Parliament held the seventeenth yeere of Richard the second, number the 20. Sir Thomas Talbot accused of high Treason for this; Its there declared,



that inſomuch as one of them was Lord High Steward of England, and the other high Conſtable of England, that this was done in deſtruction of the eſtates of the Realme; and of the Lawes of the Kingdome, and therefore adjudged Treason; and the judgement ſent downe into the Kings Bench, as appears *Eaſter-Tearme* in the ſeventh yeere of *Richard* the ſecond in the Kings Bench, *Rott.* 16. Theſe two Lords had appeared in the eleventh yeere of *Richard* the ſecond in maintenance of the Act of Parliament made the yeere before; one of them was of the Commiſſioners appointed by Parliament, & one of the Appellours of thoſe that would have overthrowne it: The Duke of *Lincoln* likewise was one of the Lords that was to have bene indicted of Treason for endeavouring the maintenance of it, and therefore conſpiring of their death is ſaid to be in deſtruction of the lawes; This there declared to be a Treason that concerned the Perſon of the King and the Commonwealth. In that great inſurrection of the Villains and meaner people in *Richard* the ſeconds time, they tooke an oath, *Quod Regi & Comuni-bus fidelitatem ſervarent*, to be true to the King and Commons, that they would take nothing but what they paid for, puniſhed all theſe with death, here's no intendment againſt the perſon of the King; The intent was to aboliſh the Law of villainage and ſervitude, to burne all the Records, to kill the Judges; this in the Parliament of the fifth yeere of *Richard* the ſecond, number the one and thirtieth and two and thirtieth, the firſt part, is declared to be Treason againſt the King and againſt the Law.

In the eleventh yeere of *Richard* the ſecond, in Parliament the raiſing of forces againſt the Commiſſioners appointed by act of Parliament the yeere before adjudged Treason by all the Judges.

The Statute of 1. *Mar.* cap. 12. enacts that if twelve or more ſhall endeavour by force to alter any of the Lawes or Statutes of the Kingdome, he ſhall from ſuch a time there limited be adjudged onely as a fellow; This act was to continue but to the next Parliament, it is expired; it ſhewes by the words onely that the offence was higher before the making of it.

My Lords, In *Queene Elizabeths* time, *Grant* & divers Prentices of *London* to the number of 200. roſe and aſſembled at Tower-hill; carried a Cloake upon a Pole inſtead of a banner, their intent was to deliver divers Prentices out of priſon that had been committed upon a ſentence in Star-Chamber for ryots, To kill the Lord Major of *London*, and for ſetting prizes on victuals. In *Trinity Tearme* 37.

*Eliz.*



*Eliz.* divers of the Judges consulted withall, and resolved that this was a levying of warre against the Queene, being intended against the government and officers of the Queen, and thereupon *Grant* and others executed as Traitors.

Afterwards in that *Queenes* time, divers of the County of *Oxford* consulted together to goe from house to house in that County, and thence to *London* & other parts to excite them to take Armes for the throwing in of all inclosures throughout *England*, nothing was done, nor no Assembly: The Statute of 13. *Eliz. cap. 1.* during the *Queenes* life made it Treason to intend or advise to levy war against the Queene.

In *Easter Terme*, 39. *Eliz.* All the Iudges of *England* met about the case, it was resolved by them, that this was a warre intended against the Queen, they agreed that if it had been of one Towneship or more upon private interest and claime of right of Common, it had not bin Treason: But this was to throw in all inclosures thorough the Kingdome, wherto these parties could pretend no claime; that it was against the Law, in regard that the Statute of *Merton* gave power of Inclosures in many Cases. Upon this Resolution *Bradshaw* & *Burton* were executed at *Aynestowne* hill in *Oxford-shire*, the place where they intended their first meeting.

So that, my Lords, if the end of it beto overthrow any of the Statutes, any part of the Law and settled Government, or any of the great Officers intrusted with the execution of them; this is a warre against the King.

My Lords, it will be further considerable, what shall be accounted a levying of warre in respect of the Actions & things done: There's a designe to alter some part of the Lawes and present Government, for the effecting thereof people be provided of Armes, gathered together into troopes, but after wards march not with Banners displayed, nor do *Bellum percutere*. Whether the arming themselves and gathering together upon this Designe, whether this be a war or such prosecution of the Designe with force as makes it Treason within the Statute?

First, If this be not a Warre in respect that it necessarily occasions hostile preparations on the other side?

2. From the words of the Statute, shall levy warre, and be thereof probably attainted of open Deed by people of their Condition, although the bare conspiring be not an open Deed, yet whether the arming and drawing men together be not an open Declaration of Warre?

In *Sir Thomas Talbot* case before cited in the seventeenth yeere of *Richard the second*, The Acts of force are expressed, in the Parliament Roll. That he caused divers of the people of the County of *Chester* to be armed in a war-like manner in assemblies; heere is no marching, no banners displayed.

In the eight yeere of *Henry the 8th*, *William Bell* and *Thomas Lucy* in *Cambridge* conspired with *Thomas Cheney*, called the *Hermite* of the *Quene of Fairies* to overthrow the Lawes and customes of the Realme, and for the effecting of it, they with two hundred more met together, and concluded upon a course of raising greater forces in the county of *Kent*, and the adjacent Shires, this adjudged Treason. These were open Actes.

My Lords, for the application of both these to the Case in question. First in respect of the end of it, here was a warre against the King. It was to subvert the Lawes, This being the designe for the effecting of it, he assumed to his own person, an arbitrary power over the lives, liberties and estates of his Majesties Subjects, and determined Causes upon paper petitions at his own will and pleasure, obedience must be forced by the Army, this declared by the Warrant.

My Lords, if it be said, That the Warrant expresseth not any intent of subverting the Lawes, It expresseth fully one of the principall means whereby this was to be done, that is, obedience to his arbitrary orders upon paper petitions, this was done in reference to the maine designe.

In the Cases of the Towne of *Cambridge* and *Sr. William Cogge*, that have formerly been cited to your Lordships, upon other occasions, the things in themselves were not Treason, they were not a levying of Warre.

In that of *Cambridge*, the Towne met together, and in a forcible manner broke up the University treasury, and tooke out of it the Records and Evidence of the liberties of the University over the Town.

In the other, they of *Bridgewater* marched to the Hospitall, and compelled the Master of the Hospitall to deliver unto them certaine Evidences that concerned the Towne, and forced him to enter into a bond of two hundred pound.

These, if done upon these private ends alone, had not been Treason, as appears by the very words of the Statute of 25. *Edw. 3.* before mentioned of marching openly or secretly.

But my Lords, these of *Cambridge* and *Bridgewater*, they were of the conspiracy with the villains, as appears in the Parliament Roll of

of the first year of *Richard* the second, number the one and thirtieth, & two and thirtieth, where the Towns of *Cambridge* and *Bridgewater* are expressly excepted out of the generall pardon made to the Villaines. This being done in Reference to that designe of the villaines of altering the Lawes, this was that which made it Treason, and yd. bonifab won a. 39

If the designe went no further then the enforcing obedience to these paper orders made by himselfe, It was sufficient; it was to subvert one fundamentall part of the Lawes, nay in effect the whole Law: what use of Law if he might order and determine of mens estates at his own pleasure? This was against the Law notoriously declared in *Ireland*.

In the cloister of the Tower, in the five and twentieth year of *Ed. 1.* a Writ went to the Justices in *Ireland* (that Kingdome at that time was governed by Justices) declaring that upon petitions they were not to determine any titles betwene party and party upon any pretence of profit whatsoever to the King.

In the eight and twentieth year of *Henry* the six, the second Chapter, Sutes in equity, not before the Deputy, but in Chancery, Sutes at Common Law, not before him, but in Cases of life in the Kings Bench, for title of land or goods in the proper Courts of the Common pleas, or Kings Bench.

This declared in the Instructions for *Ireland* in the latter end of King *James* his time, and by the Proclamation in his Majesties time, my Lord took notice of them, called the Commissioners narrow-hearted Commissioners.

The Law said, he should not thus proceed in subversion of it; he saith, he will, and will enforce obedience by the Army. This is as much in respect of the end, as to endeavour the overthrow of the Statutes of *Laborers*, of *vituals*, or of *Merton* for *Enclosures*. Here is a warre against the King in respect of the end.

In respect of the Actions, whether there be either a levying of war, or an open deed, or both.

My Lords, there was an Army in *Ireland* at that time of two thousand horse and foot, by this Warrant there is a full designation of this whole Army, and an Assignment of it over unto *Savill* for this purpose. The Warrant gives him power from time to time to take as many souldiers, horse and foot, with an Officer, throughout the whole Army as himselfe shall please, heere is the terrour and awe of the whole Army to enforce obedience. My Lords, if the Earle had armed two thousand men, horse and foot, and formed them into companies to this end, your Lord-



ships would have conceived that this had been a warre. It is as much as in the case of Sir *Thomas Kalbot* who armed them in assemblies.

This is the same with a breach of trust added to it. That Army was first raised and afterwards committed to his trust for defence of the people, is now destined by him to their destruction. This assignation of the Army by his Warrant under his hand and seale is an open Act.

2. My Lords, heer's not onely an open act done, but a levying of war, souldiers both horse and foot, with an Officer in warlike manner sessed upon the subject, which killed their Cattell, consumed and wasted their goods.

But five or sixe were the most employed at any time, a mighty warre of six men, scarce a Ryot.

Your Lordships observe a great difference where six single men goe upon a designe alone, and when sent from an Army of six hundred, all engaged in the same service, so many were sent as were sufficient to execute the command; if upon a poore man fewer, more upon a rich; if the six had not beene able, the whole Army must make it good; the reason that the Sheriffe alone, or but with one Bayliffe to doe execution, is, because he hath command of the Law, the Kings Writ and the *posse Comitatus* in case of Resistance; heer's the warrant of the Generall of an Army, heer's the *posse exercitus*, the power of the Army, under this awe of the whole Army, six may force more then sixty without it, and although never above six in one place, yet in the severall parts of the Kingdome at the same time might be above sixty; for sselling of souldiers was frequent, it was the ordinary course for execution of his orders.

The Lord Lieutenant of a County in *England* hath a designe to alter the Lawes and government, nay admit the design goes not so high, he onely declares thus much, that he will order the freeholds and the estates of the Inhabitants of the County at his owne will and pleasure, and doth accordingly proceed upon paper petitions; foreseeing there will be disobedience, he grants out warrants under his hand and seale to the deputy Lieutenants and Captaines of the traine bands, that upon refusal they shall take such number of the traine bands thorow the County with Officers, as they shall think good, and lay them upon the lands and houses of the refusers; Souldiers in a warlike manner are frequently sessed upon them accordingly. Your Lordships doe conceive that this is a levying of Warre within the Statute.

The Case in question goes further in these two respects.

1. That



both That it is more against the declared Law in *Ireland*, not only against the Common Law, but likewise against the Statute of the eight and twentieth yeare of *Henry* the sixth, against the Acts of the Commissioners, against Proclamations in pursuance of the Law, against that himselfe took notice of, Narrow hearted Commissioners.

2<sup>nd</sup> In this, that here was an Army, the Souldiers, Souldiers by profession, Acts of hostility from them of greater Terror than from free-holders of the same County.

My Lords, I have now done with the first of levying warre.

2 The second is the machination, the advising of a warre; The case in this rests upon the warrant to *Savill*, and the advice in the 23 Article,

The Warrant shewes a resolution of employing the old Army of *Ireland*, to the oppression of his Majesties Subjects and the Lawes.

In the 23 Article, having told his Majesty that he was loosed and absolved from rules of Government, and might doe every thing which power might admit, he proceeded further in speech to his Majesty, in these words; You have an Army in *Ireland* you may employ to reduce this Kingdom.

My Lords, both being put together, there's a machination, a practise, an advise to levie warre, and by force to oppress and destroy his Majesties Subjects.

✓ *Obj.* It hath beene said, the Statute of 25. *Edw.* 3. is a penall Law, and cannot bee taken by equity and construction, there must be an actuall warre; the Statute makes it Treason to counterfeit the Kings Coyne, the conspiring, the raising of furnaces is no Treason, unlesse he doth *numismatum percutere*, actually coyne.

✓ *Answ.* My Lords, this is only said, not proved, the Law is otherwise, 19. of *Henry* the sixth, fol. 47. there adjudged that the conspiring and ayding to counterfeit coyne was Treason; and Justice *Stamford* fol. 3. & 44. is of opinion, That this, or conspiring to counterfeit the great Seale is Treason. The Statute is, If any shall counterfeit the great Seale, conspiring to doe it by the book, is Treason; if a man take the broad Seale from one Patente, and put it to another, here is no counterfeiting, it's *transmutatio*, and therefore Treason, as is adjudged in 2. *Henry* 4. fo. 25. and by the opinion of *Stamford*.

If machination or plotting a warre be not within that clause of the Statute of levying warre, yet it's within the first of compassing the death of the King, as that which necessarily tends to the destruction both of the King and of the people, upon whose safety and protection

he

he is to engage himselfe. That this is Treason hath beene adjudged both after the Statutes of the first of *Henry* the fourth, chapter the tenth, and the first of *Queene Mary*, the first chapter also much insisted upon on the other side. In the third yeare of King *Henry* the fourth, one *Balshall* coming from *London*, found one *Bernard* at plough in the parish of *Osley* in the Countie of *Hertford*; *Bernard* asked *Balshall*, what news, he told him the newes was; That King *Richard* the second was alive in *Scotland* (which was false, for he was then dead) and that by *Midsummer* next he would come into *England*; *Bernard* asked him, what was best to be done; *Balshall* answered, get men, and goe to King *Richard*. In *Michaelmas Terme*, in the third yeare of *Henry* the fourth, in the Kings Bench, rot. 4. this advise of warre adjudged Treason. W 601.

In *Queene Mary*'s time, Sir *Nicholas Throgmorton* conspired with Sir *Thomas Wyatt* to levie warre within this Realme for alteration in Religion, he joyned not with him in the execution. This Conspiracy alone declared to be Treason by the Judges. This was after the Statute of the first of *Queene Mary* so much insisted upon. That Parliament ended in *October*, this opinion was delivered the *Easter Terme* after, and is reported by Justice *Dyer*, fo. 98. It's true, Sir *Thomas Wyatt* afterwards did levie warre, Sir *Nicholas Throgmorton* he only conspired, this adjudged Treason.

*Storie*, in *Queene Elizabeth*'s time, practised with Forreiners to levy warre within the Kingdome, nothing done in pursuance of the practise. The intent without any adhering to Enemies of the *Queene* or other cause, adjudged to be Treason, and he executed thereupon. It's true my Lords, that yeare 13. *Elizabeth* by Act of Parliament, it's made Treason to intend the levying of warre; this case was adjudged before the Parliament. The case was adjudged in *Hillary Terme*, the Parliament began not untill the *April* following; This my Lords, is a case adjudged in point, That the practising to levy warre, though nothing be done in execution of it is Treason.

*Obj.* It may be objected that in these Cases, the conspiring being against the whole Kingdome included the *Queene*, and was a compassing her destruction, as well as of the Kingdome; here the advice was to the King.

*Ans.* 1. The answer is, first, that the warrant was unknowne to his Majesty, that was a machination of warre against the people and Laws, wherein his Majesties person was engaged for protection.

2. That the advice was to his Majesty, aggravates the offence, it was

was an Attempt not only upon the Kingdome, but upon the Sacred person, and his office too; himsef was *hostes patrie*; hee would have made the Father of it so too; nothing more unnaturall, more dangerous; To offer the King poyson to drink, telling him that it is a Cordiall, is a compassing of his death. The poyson was repelled, there was an antidote within, the malice of the giver beyond expression. The perswading of Forreiners to invade the kingdome holds no proportion with this: Machination of warre against the Lawes or kingdome is against the King, they cannot be severed.

My Lords, if no actuall warre within the Statute, if the counselling of a war, if neither of these single Acts be Treason within the Statute; The Commons in the next place have taken it into their consideration, what the addition of his other words, Counsells, and Actions, do operate in the case, and have conceived, That with this addition all being put together, that he is brought within the Statute of 25. *Edward 3.*

The third  
generall  
Head.

The words of the Statute are, if any man shall compass or imagine the death of the King, the words are not, if any man shall plot or consult the death of the King, no my Lords, they go further than to such things as are intended immediately, directly, and determinatively against the life and person of the King, they are of a larger extent; to compass is to doe by circuit, to consult or practice another thing directly, which being done, may necessarily produce this effect.

Howeyer it be in the other Treasons within this Statute, yet in this by the very words there is roome left for constructions, for necessary Inferences and Consequences.

What hath bene the judgement and practice of former times concerning these words of compassing the Kings death, will appeare to your Lordships by some cases of attainders upon these words.

One *Owen* in King *James* his time in the 13. yeere of his raigne at *Sandwich* in *Kent*, spake these words, That King *James*, being excommunicated by the Pope, may bee killed by any man; which killing is no murther: being asked by those he spake to, how he durst maintaine so bloody an assertion he

C

answered



answered that the matter was not so haynous as was supposed; for the King who is the lesser is, concluded by the Pope who is the greater; and as a Malefactor being condemned before a Temporall Judge, may bee deliuered over to bee Executed; so the King standing convicted by the Popes sentence of excommunication, may justly be slaughtered without fault; for the killing of the King is the execution of the Popes supream sentence, as the other is the execution of the Law: for this, judgement of High-Treason was given against him, and execution done.

My Lords, here is no cleere intent appearing that *Owen* desired the thing should bee done, only Arguments that it might be done, This is a compassing, there is a cleere Endeavour to corrupt the judgement, to take off the bonds of conscience, the greatest security of the Kings life; God forbid saith one of better judgement than he, That I should stretch out my hand against the Lords appointed, no saith he, the Lord doth not forbid it, you may for these reasons lawfully kill the King.

Hee that denies the Title to the Crown, and plots the meanes of setting it upon another head, may doe this without any direct or immediate desiring the death of him that then weares it this, yet is Treason, as was adjudged in *ro. Henry 7.* in the case of *Burton*, and in Duke of *Norfolks* case. 13. *Elizabeth.*

This is a compassing of his death, for there can no more be two Kings in one Kingdome, then two Suns in the Firmament, he that conceives a title, counts it worth ventring for, though it cost him his life, he that is in possession thinks it as well worth the keeping. *John Sparhanke* in King *Henry* the fourths time, meeting two men upon the way, amongst other talk said, that the King was not rightfull King, but the Earle of *March*, and that the Pope would grant indulgencies to all that would assist the Earles title, and that within halfe a yeree there would be no Liveries nor Conizances of the King, that the King had not kept promise with the people, but had layd taxes upon them. In *Easter Terme* in the third yeere of *Henry* the fourth in the Kings Bench, Rot. 12. this adjudged Treason. This denying the title with motives though but impliedly of Aſſion against it, adjudged Treason, this is a compassing the Kings death.

How



How this was a compassing the Kings death, is declared in the reasons of the judgement; That the words were spoken with an intent to withdraw the affections of the people from the King, and to excite them against the King, that in the end they might rise up against him in *mortem & destructionem* of the King.

My Lords, in this Judgement and others which I shall cite to your Lordships, It appears that it is a compassing the Kings death by words, to indeavour to draw the peoples hearts from the King, to set discord between the King and them, whereby the people should leave the King, should rise up against him to the death and destruction of the King.

The cases that I shall cite, prove not onely that this is Treason, but what is sufficient evidence to make this good.

Upon a Commission held the 18. yeere of *Edw. 4.* in *Kent*, before the *Marquesse of Dorset* and others, an Inditement was preferred against *John Awater* of High-Treason, in the forme before mentioned, for words which are entred in the enditement *sub hac forma*, That he had beene servant to the Earle of *Warwicke*, that though he were dead, the Earle of *Oxford* was alive, and should have the government of part of the Countrey, That *Edward* whom you call King of *England*, was a false man, and had by art and sublety slaine the Earle of *Warwicke* and the Duke of *Clarence* his brother, without any cause, who before had beene both of them attainted of High-Treason.

My Lords, this Inditement was returned into the Kings Bench in *Trinity* Terme in the eighteenth yeere of *Edward* the fourth, and in *Easter* Terme in the two and twentieth yeere of *Edward* the fourth he was outlawed, by the stay of the outlawry, so long it seemes the Judges had well advised before whether it were Treason or not.

At the same Session *Thomas Hober* was indited of Treason for these words, *That the last Parliament was the most simple and insufficient Parliament that ever had beene in England. That the King was gone to live in Kent, because that for the present he had not the love of the Citizens of London, nor should he have it for the future. That if the Bishop of Bath and Wels were dead, the Archbishop of*

Canterbury, being Cardinall of England, would immediately lose his head. This inditement was returned into the Kings Bench in Trinity Terme in the eighteenth yeere of Edward the fourth. Afterwards there came a Privy Seale to the Judges to respite the proceedings, which as it should seeme was to the intent the Judges might advise of the Case, for afterwards he is outlawed of high Treason upon this inditement.

These words were thought sufficient evidence to prove these severall Inditements, That they were spoken to withdraw the peoples affection from the King, to excite them against him, to cause risings against him by the people, *in mortem & destructionem* of the King.

Your Lordships are pleased to consider that in all these Cases, the Treason was for words onely, words by private persons, and in a more private manner, but once spoken and no more, onely amongst the people, to excite them against the King.

My Lords, here are words, Counsels more than words, and actions too, not onely to dis-affect the people to the King, but the King likewise towards the people; not once but often, not in private, but in places most publique, not by a private person, but by a Counsellor of State, a Lord Lieutenant, a Lord President, a Lord Deputy of Ireland.

1 To his Majesty, *That the Parliament had denied to supply him*; a slander upon all the Commons of England in their affections to the King and Kingdome, in refusing to yeeld timely supply for the necessities of King and Kingdome.

2 From thence, *That the King was loose and absolved from rules of government, and was to doe every thing that power would admit.* My Lords, more cannot be said, they cannot be aggravated, whatever I should say would be in diminution.

3 Thence, *You have an Army in Ireland you may imploy to reduce this Kingdome.*

To counsell a King not to love his people, is very unnaturall, it goes higher, to hate them, to malice them in his heart; the highest expressions of malice, to destroy them by warre: These coales they were cast upon his Majesty, they were blowne, they could not kindle in that brest.

Thence

Thence, my Lords, having done the utmost to the King, hee goes to the people: At York the Country being met together for Justice, at the open Assizes upon the Bench, he tels them, speaking of the Justices of the Peace, *that they were all for Law, nothing but Law, but they should find that the Kings little finger should be heavier than the loines of the Law.*

*They shall find*, my Lords, who speaks this to the people, a Privie Counsellour? this must be either to traduce his Majesty to the people as spoken from him, or from himselfe, who was Lord Lieutenant of the County and President, intrusted with the forces and Justice of those parts, that he would imploy both this way; add, my Lords, to his words there the exercising of an arbitrary and vast Jurisdiction before he had so much as Instructions or colour of warrant.

Thence we carry him into *Ireland*, there he represented by his place the sacred person of his Majesty.

1 There at *Dublyn*, the principall City of that Kingdome, whither the Subjects of that Countrey came for Justice, in an Assembly of the Peeres and others of greatest ranke, upon occasion of a speech of the Recorder of that City touching their Franchises and Legall Rights, he tels them, *that Ireland was a conquered Nation, and that the King might doe with them what he pleased.*

2 Not long after, in the Parliament 10. Car. in the Chaire of State, in full Parliament, againe, *That they were a conquered Nation, and that they were to expect Lawes as from a Conquerour; before, The King might doe with them what he would; now, They were to expect it, that he would put this power of a Conquerour in execution.* The Circumstances are very considerable, in full Parliament, from himselfe in *Cathedra*, to the representative body of the whole Kingdome.

The occasion adds much, when they desire the benefit of the Lawes, and that their Causes and Suites might be determined according to Law, and not by himselfe, at his will and pleasure upon paper Petitions.

3 Upon like occasion of pressing the Lawes and Statutes, That hee would make an *Act of Connell board in that Kingdome as*

*binding as an Act of Parliament.*

4. He made his words good by his actions, assumed and exercised a boundlesse and lawlesse Jurisdiction over the lives, persons, and estates of his Majesties Subjects, procured judgement of death against a Peere of that Realme, commanded another to be hanged, this was accordingly executed, both in times of high Peace, without any processe or colour of Law.

5. By force for a long time he seized the yarne and flax of the Subjects, to the starving and undoing of many thousands, besides the Tobacco businesse, and many Monopolies and unlawfull Taxes, forced a new Oath not to dispute his Majesties royall commands, determined mens estates at his owne will and pleasure upon paper Petitions to himselfe, forced Obedience to these, not onely by Fines and Imprisonment, but likewise by the Army, seized Souldiers upon the refusers in a hostile manner.

6. Was an Incendiary of the warre betweene the two Kingdomes of *England* and *Scotland*.

My Lords, we shall leave it to your Lordships Judgements, whether these words, Counsells, and Actions would not have beene a sufficient Evidenceto have proved an Inditement drawne up against him, as those before mentioned, and many others are; That they were spoken and done to the intent to withdraw the Kings heart from the people, and the affections of the people from the King, that they might leave the King, and afterwards rise up against him to the destruction of the King; if so, here is a compassing of the Kings death within the words of the Statute of the five and twentieth yeare of *Edward* the third, and that warranted by many former judgements.

*The fourth  
generall  
Head.*

My Lords, I have now done with the three Treasons within the Statute of the five and twentieth of *Edward* the third. I proceed to the fourth upon the Statute of the eighteenth yeare of *Henry* the sixt, Chapter the third in *Ireland*; I shall make bold to read the words to your Lordships,

*That no Lord, nor any other of what condition soever he be, shall bring or lead heblers, kervess, or hooded men, nor any other people, nor horses to lie on horseback or on foot upon the Kings Subjects without their good wills and consent, but upon their owne costs, and without hurt.*



hurt doing to the Commons; and if any so doe he shall be judged a Traitor.

1. The Argument that hath been made concerning the Person, That it extends not to the King; and therefore not to him, weights nothing with your Lordships, *Rex non habet in regno parem*, from the greatnesse of his office to argue himselfe into the same impossibility with his sacred Majesty of being incapable of High-Treason, it's an Offence, no reason; The words in the Statute, *No Lord nor any other of what condition soever he be*, includes every Subject.

In Trinity Terme in the three and thirtieth yeare of Henry the eight, in the Kings Bench; Leonard Lord Gray, having immediately before been Lord Deputy of Ireland; is attainted of High-Treason, and judgement given against him for letting divers Rebels out of the Castle of Dublin, and discharging Irish hostages and pledges that had been given for securing the Peace, for not punishing one that said the King was an Heretique, I have read the whole Record, ther's not one thing laid to his charge but was done by him as Lord Lievetenant: Hee had the same Plea with my Lord of Strafford, That these things were no adhering to the Kings Enemies, but were done for reasons of State, That he was not within those words of the Statute of the five and twentieth yeare of Edward the third, himselfe being Lord Lievetenant there, they cost his life.

Obj. 2. It hath been said, That the Souldiers, sessed upon the Subjects by him, were not such persons as are intended by that Statute, *Hoblers, Kernes, and hooded men*, these rascall people.

Ans. My Lords, they were the names given to the Souldiary of those times, Hoblers horsemen, the other the foot, but the words of the Statute goe further, *Nor any other people, neither horse nor foot*, his Lordship sessed upon them both horse and foot.

Object. . The Statute extends only to them that leade or bring, Savill led them, my Lord onely gave the warrant.

Ans. To that I shall say onely thus, *plus peccat auctor quam actor*, by the rule of Law, *agones & consentientes pari plectuntur pena*, if consent, much more a command to doe it, makes the commander a Traitor. If there bee any Treason within

th-s

this Statute, my Lord of *Sirafford* is guilty.

It hath been therefore said, That this Statute like *Goliath's sword* hath been wrapt up in a cloth and laid behind the doore, that it hath never been put in execution.

*Answ.* My Lords, if the Cleark of the Crowne in *Ireland* had certified your Lordships that upon search of the Judgements of Attainders in *Ireland*, he could not finde that any man had bin attainted upon this Statute, your Lordships had had some ground to helieve it, yet its onely my Lord of *Siraffords* affirmation: Besides your Lordships know that an Act of Parliament binds untill it be repealed.

It hath been therefore said, that this Statute is repealed by the Statutes of the eighth yeere of *Edward* the fourth, the first Chapter, and of the tenth yeere of *Henry* the seventh, the two and twentieth Chapter, because by these two Statutes, the English Statutes are brought into *Ireland*.

The Argument, (if I mistook it not,) stood thus; That the Statute of the first of *Henry* the fourth, the 10. Chapter, saith, that in no time to come, Treason shall be adjudged otherwise, then it was ordained by the Statute of the 25. yeere of *Edward* the third, That the treason mentioned in the 18. yeere of *Henry* the sixth in the Irish Statute is not contained in the statute of the 25. yeere of *Edward* the 3. and therefore being contrary to the statute of the first of *Henry* the fourth, it must needs be void.

My Lords, the difference of the times wherein the statute of the first yeere of *Henry* the fourth, and that of the 18. yeere of *Henry* the sixth were made, clears the Point, as is humbly conceived; that of *Henry* the sixth was made forty yeares after the other.

The Statute of the eighth yeere of *Edward* the fourth, and the tenth of *Henry* the seventh, bringing in the English Statutes in order and series of time, as they were made one after another (as afterwards is proved they did) it cannot be that the Statute of the first yeere of *Henry* the fourth made forty yeere before, should repeale or make void the statute of the 18. H. 6. made so long after. The rule of Law is that *Leges posteriores priores*

*abrogant.*

abrogant, that latter lawes repeale former, but by this construction a former Law should repeale and make void a *Non est*, a statute that then was not.

If this were Law, then all the statutes that made any new treason after the first yeere of *Henry the fourth*, were void in the very fabricke, and at the time when they were made; hence likewise it would follow that the Parliament, now upon what occasion soever, hath no power to make any thing treason not declared to be so in the statute of the five and twentieth yeere of *Edward the third*; This your Lordshippes easily see would make much for my Lord of *Strafford*'s advantage; but why the Law should be, so your Lordshippes as yet have onely heard an affirmation of it, no reason.

But some touch was given that this statute of the tenth yeere *Henry the seventh*, in words makes all the Irish statutes void, which are contrary to the English. The Answer to this, is a deniall that there are any such words in the statute: This statute declares, that the English statutes shall be effectuell and confirmed in *Ireland*, and that all statutes, before time, made to the contrary shall be revoked; this repeales onely the Irish statutes of the tenth yeere of *Henry the fourth*, and the nine and twentieth yeere of *Henry the sixth*, which say that the English statutes shall not be in force in *Ireland*, unless particularly received in Parliament. It makes all the Irish statutes void, which say that the English statutes shall not be in force there.

It is usuall when a Statute saith, that such a thing shall be done, or not done, to add further that all Statutes to the contrary shall be void.

No likeli-hood that this Statute intended to take away any Statute of Treason; When but in the Chapter next before this, Murder there is made Treason, as if done upon the Kings Person.

That this Statute of the eighteenth yeere of *Henry the sixth* remains on foot and not repealed either by the Statute of the eighth yeere of *Edward the fourth*, or this of the tenth yeere of *Henry the seventh*, appeareth expressly by two severall Acts of Parliament made at the same Parliament of the tenth

yeere of *Henry the seventh*.  
 By an Act of Parliament in *Henry the first* time, in  
*Ireland*, it was made Treason for any man to procure a  
 privie Seale, or any other Command whatsoever, for  
 apprehending any person in *Ireland* for Treason done with-  
 out that Kingdome, and to put any such Command in  
 execution; Divers had beene attainted of Treason for  
 executing such Commands: Heere is a Treason so made  
 by Act of Parliament in *Henry the first* time. In the  
 third Chapter of this Parliament of the tenth of *Henry*  
 the seventh, an Act is passed for no other end then to repeale  
 this Statute of *Henry the sixth* of Treason.

If this statute of *Henry the first* of Treason, had  
 beene formerly repealed by the Statute of 8. *Edward 4.*  
 or then by the two and twentieth Chapter of this Par-  
 liament of 10. *Henry 7.* by bringing in the English Sta-  
 tutes, the Law-makers were much mistaken, now to  
 make a particular Act of Parliament to repeale it, it being  
 likewise so unreasonable an Act as it was.

In the eighth Chapter of this Parliament, of the tenth of  
*Henry the seventh*; It's enacted, That the Statutes of *Kilkenny*  
 and all other Statutes made in *Ireland* (two onely excepted,  
 wherof this of the eighteenth of *Henry the first* is none) for  
 the Common-weale shall be enquired off and executed. My Lord  
 of *Strafford* saith, that the bringing in of the English Statutes,  
 hath repealed this Statute of the eighteenth yeere of *Henry the*  
*first*, the Act of Parliament made the same time saith no; it  
 saith that all the Irish Statutes, excepting two, wherof this is  
 none, shal still be in force.

Object. Oh! But how ever it was in 10. *H. 7.* yet it appears  
 by Judgement in Parliament afterwards, That this Sta-  
 tute of the eighteenth yeere of *Henry the sixth* is repealed,  
 and that is by the Parliament of the eleventh yeere of  
*Queene Elizabeth*, the seventh Chapter, That by this Par-  
 liament it is enacted, that if any man without license from the  
 Lord Deputie, lay any Souldiers upon the Kings Subjects, if  
 there bee a Peace of the Realme, hee shall forfeit one hun-  
 dred



*hundred pounds, if under the degree of a Peer, 100 marks.*  
 This Statute as is alleadged, declares the penalty of laying  
 Souldiers upon the Subjects, to bee onely a hundred pounds;  
 and therefore its not Treason.

*Answer,* My Lords, if the offence for which this  
 penaltie of one hundred pounds, is laid upon the offender,  
 bee for laying Souldiers, or leading them to doe any  
 acts offensive or invasive upon the Kings people, The  
 Argument hath some force; but that the offence is not for  
 laying Souldiers upon the true Subjects, that this is not  
 the offence intended in the Statute, will appeare to your  
 Lordships, *Ex absurda*, from the words of it.

The words are, *That if any man shall assemble the people  
 of the County together to conclude of peace or warre, or shall  
 carry those people to doe any Acts offensive or invasive,  
 then hee shall forfeit one hundred pounds;* If concluding of  
 warre and carrying the people to Acts invasive, be against  
 the Kings Subjects, this is high Treason within the words of  
 the Statute of the five and twentieth yeere of *Edward* the  
 third; For if any Subject shall assemble the people and  
 conclude a warre, and accordingly shall lead them to in-  
 vade the Subject, this is a levying of warre within the word of  
 that Statute; and then the Statutes of the five and twentieth  
 yeer of *Edward* the third; the first of *Henry* the fourth; and the  
 first of *Queene Mary* which the Earle of *Sirafford* in his An-  
 swer desires to be tryed by, are as well repealed in this point,  
 as the Statute of the eighteenth yeere of *Henry* the sixth, he  
 might then without feare of Treason have done what he plea-  
 sed with the Irish Army; for all the Statutes of levying  
 warre, by this Statute of the eleventh Yeere of *Queene*  
*ELIZABETH* were taken out of his way.

In *Ireland* a Subject gathers forces, concludes a warre  
 against the Kings people, actually invades them; blood-  
 shedde, burning of houses, Depredations ensue; two of  
 those, that is, murder and burning of houses are Treason,  
 and there the other felony; by this construction the punish-  
 ment

ment

ment of Treason and felony is turned only into a fine of one hundred pounds; from losse of life, lands, and all his goods, only to losse of part of his goods.

3 The third absurdity, a warre is concluded; three severall Inrodes are made upon the Subject; in the first, a hundred pound Damage; in the second, five thousand pound Damage; in the third, tenne thousand pound Damage is done to the Subjects; the penalty for the last inrode is no more than for the first, only one hundred pounds. This statute by this construction tells any man how to get his living without long labour.

Two parts of the hundred pounds is given to the King, a third part to the informer; here's no dammage to the Subject that is robbed and destroyed.

My Lords, the Statute will free it selfe and the makers of it from these absurdities.

The meaning of this Statute is; *That if any Capitaine shall of his owne head conclude of peace or warre against the Kings Enemies or Rebels; or shall upon his owne head invade them, without warrant from the King, or the Lord Deputie of Ireland, that then he shall forfeit a hundred pounds.*

The offence is not for laying of Souldiers upon the Kings people, but making of warre against the Irish Rebels without warrant; the offence is not in the matter, but in the manner, for doing a thing lawfull, but without mission.

1 This will appeare by the generall scope of the Statute, all the parts being put together.

2 By particular clauses in the Statute. And,

3 By the Condition of that Kingdome at the time of the making of that Statute.

For the first, The preamble recites that in time of Declination of Justice under pretext of defending the Countrey and themselves, divers great men arrogated to themselves Regall authority under the names of Captaines, that they acquired to themselves that govern.

government which belonged to the Crowne, for preventing this law enacted, that no man dwelling within the Shire grounds, shall thenceforth assume or take upon himselfe the authority or name of a Captain within those Shire grounds, without Letters Pattentes from the Crowne, nor shall under colour of his Captaineship make any demand of the people of any exaction, nor as a Captaine assemble the people the shire grounds; nor as a Captaine shall lead those people to do any acts offensive or invasive without warrant under the great Seale of England or of the Lord Deputy upon penalty that if he doe any thing contrary to that act, then the Offendor shall forfeit a hundred pounds.

My Lords, the Rebels had beene out, the Courts of justice scarce late, for defence of the Countrey, diverse usurped the place of Capitaines, concluded of war against the Rebels and invaded them without warrant; invading the Rebels without authority is the crime.

This appeares further by particular clauses in the Statute, none shall exercise any Captainship within the shire grounds, nor assemble the men of the shire grounds to conclude of warre, or lead them to any invasion.

That that had anciently beene so continued to this time, that is the *Irish* and the *English* pale; they within the shire grounds were within the *English* pale, and *ad fidem & legem Anglie*; the *Irish* that were without the pale were enemies alwaies either in open act of hostility or upon leagues, and hostages given for securing the peace, and therefore as here in *England*, we had our marches upon the frontiers in *Scotland* and *Wales*, so were their Marches between the *English* and *Irish* pale, where the inhabitants held their Lands by this tenure to defend the Countrey against the *Irish*, as appeares in the close Rolls of the Tower in the 30. yeere of *Edward* the third, *membrans* 15. on the backside, and in an *Irish* Parliament held the 41. yeere of *Edward* the 3. Its declared, that the *English* pale was almost destroyed by the *Irish* enemies, and that there was no way to prevent the danger, but onely that the owners reside upon their Lands for defence, and that absence should be a forfeiture, this act of Parliament in a great counsell here was affirmed, as appeares in the close Roll, the 22. yeere of *Edward* the third, *membrans* 20. dole.

Afterwards as appeares in the Statute of the 28. yeere of *Henry* the 6. in *Ireland*, this hostility continued betweene the *English* marches and the *Irish* enemies, who by reason there

was no difference between the *English* marches and them in their apparell, did daily not being known to the *English*, destroy the *English* within the pale. Therefore it enacted, that every *English* man shall have the haire of his upper lip for distinction sake. This hostility continued, till the 10. yeere of *Henry* the 7. as appears by the Statute of the tenth of *Henry* the 7. the 17. Chapter 3. and so successively downe wards, till the making of this very Statute of the 11. yeere of *Q. Elizabeth*, as appears fully in the ninth Chapter.

Nay immediately before, and at the time of the making of this Statute, there was not onely enmity between those of the Shire grounds, that is, the *English* and *Irish* pale, but open Warre and Acts of hostility, as appears by History of no lesse authority, then that Statute it selfe; for in the first Chapter of this Statute is the Attainder of *Shane O Neale*, who had made open Warre, was slaine in open Warre. Its there declared, that he had gotten by force all the North of *Ireland* for an hundred and twenty miles in length; and above a 100. in bredth; that he had mastered divers places within the *English* pale; when the flame of this warre by his death immediately before this Statute was spent, yet the fire-brands were not all quenched, for the rebellion was continued by *John Fitz Gerard* called the white Knight, and *Thomas Queverford*, this appears by the Statute of the 13. yeere of *Qu. Elizabeth* in *Ireland*, but two yeeres after this of the eleventh yeere of *Qu. Elizabeth*, where they are attainted of high treason for levying Warre this eleventh yeere, wherein this Statute was made.

So that my Lords, immediately before, and at the time of the making of this Statute, there being Warre betweene those of the Shire grounds mentioned in this Statute, and the *Irish*, the concluding of Warre and Acts offensive and invasive there mentioned can be intended against no others, but the *Irish* enemies.

Again the words of the Statute are, no Capitaine shall assemble the people of the Shire grounds to conclude of peace or warre, is it to be presumed that those of the Shire grounds will conclude of Warre against themselves? nor saith the Statute shall carry those of the Shire grounds to doe any Acts invasive; by the construction which is made on the other side, they must be carried to fight against themselves.

Lastly the words are, as Capitaine none shal assume the name or authority of a Capitaine, or as a Capitaine shall gather the people together, or as a Capitaine lead them. The offence is,



not in the matter, but in the manner: If the acts offensive were  
against the Kings good subjects, those that went under com-  
mand were punishable, as well as the Commanders, but in re-  
spect the Souldiers knew the service to be good in it selfe being  
against the enemies, and that it was not for them to dispute the  
authority of their commanders, the penalty of a 100. pounds is  
laid onely upon him, that as Captaine shall assume this power  
without warrant, the people commanded are not within the  
Statute.

My Lords, the logicke whereupon this argument hath beene  
framed stands thus, because the Statute of the eleventh yeere of  
Qu. Elizabeth inflicts a penalty of a 100. pound, and no more  
upon any man, that as a Captaine without warrant, and upon  
his owne head shall conclude of, or make Warre against the  
Kings enemies: therefore the Statute of the 18. yeere of Henry  
the sixth, is repealed, which makes it treason to lay Souldiers  
upon, or to levie warre against the Kings good people.

But my Lords observation hath beene made upon other  
words of this statute, that is, that without licence of the De-  
puty, these things cannot be done: This shewes, that the De-  
puty is within none of these Statutes.

My Lords, this Argument stands upon the same reason with  
the former, because hee hath the ordering of the Army of Ire-  
land for the defence of the people, and may give warrant to the  
Officers of the Army upon eminent occasions of invasion to re-  
sist or prosecute the enemy, because of the danger that else might  
ensue forthwith by staying for a warrant from his Majesty out  
of England: Therefore it is no treason in the Deputy to employ  
the Army in Ireland whensoever he pleaseth for the subversion  
of the Kings good people, and of the lawes.

My Lords, the Statute of the tenth yeere of Henry the 7. the  
17. Chapter touched upon for this purpose, clears the businesse  
in both points, for there it is declared, that none ought to make  
warre upon the Irish rebels and enemies without warrant from  
the Lieutenant, the forfeiture a 100. pounds as here the Statute  
is the same with this, and might as well have beene cited for re-  
pealing the Statute of the eighteenth yeere of Henry the 6. as this  
of the 11. yeere of Q. Elizabeth: but if this had bin insisted upon, it  
would have expounded the other two cleare against him.

My Lords, it hath been further said, although the Statute be in  
force, and there be a treason within it, yet the Parliament hath no  
jurisdiction; the treasons are committed in Ireland, therefore not  
triable here.

My Lords, Sir John Perrot his predecessors in the 24. yeere of *Ans.*  
Q. Eli.

Obj.

Ans.

Obj.

Gray was tried in the Kings bench for treason done in Ireland, when he was Deputy; and Orde in the 33. yeere of Q. Elizabeth judged here for treason done in Ireland.

But it will be said, these trials were after the Statute of the 34. yeere of Henry the eight, which enacts, that treasons beyond sea may be tried in England.

My Lords, his predecessor my Lord Gray was tried and adjudged here in the Kings bench, that was in Trinity term in the 33. yeere of Henry 8. this was before the making of that Statute.

To this againe will be said, that it was for treason by the Lawes and Statutes of England, but this is not for any thing, that treason by the Law of England, but by an Irish Statute.

So that the question is only whether your Lordships in Parliament here have cognizance of an offence made treason by an Irish Statute in the ordinary way of judicature without bill, for so is the present question.

For the clearing of this, I shall propound two things to your Lordships consideration:

1.

Whether the rule for expounding the Irish Statutes and customs be one, and the same in England as in Ireland.

2.

That being admitted whether the Parliament in England have cognizance or jurisdiction of things done in respect of the place, because the Kings writ runnes not there.

For the first, if in respect of the place, the Parliament here hath cognizance there; And secondly, if the rules for expounding the Irish Statutes and Customs be the same here as there, this exception is I humbly conceive made all away.

In England there is the common law, the Statutes, the rules of Parliament and customs peculiar to certaine places differing from the common law, if any question arise concerning either a custom or an act of Parliament, the common law of England; the first, the primitive and the generall law, that is the rule and expositor of them and of their severall extents, it is so here, it is so in Ireland, the common law of England is the common law of Ireland likewise; the same here and there in all the parts of it.

It was introduced into Ireland by King John, and afterwards by H. Henry the 3. by act of Parliament held in England, as appears by the patent Rolls of the 30. yeere of H. Henry the 3. the first membrum. The words are, *Quia pro communibus libertatibus terrarum Regis, Rex vult et de communibus consilio Regis processum est, quod omnes Regis et consuetudines que in regno Anglie tenentur, in eadem terra veniantur, et eadem terra eisdem legibus subiacet, et per easdem regatur, sicut Dominus Johannes Rex in Anglia et in eadem terra, et sicut mandavit. Quia et Rex vult quod omnia*

*ad unum Verbum de huiusmodi Intelligitur in Anglia. similiter cur-  
rent in Gallia sub novo sigillo Regis. mandatum est Archiepiscopo,  
et c. quod pro pace et tranquillitate ejusdem terrae, per eadem leges et  
regi et debuerint permittant, et c. in omnibus sequantur. In Anglia et c.  
Velle Regis, apud Woodstock, decimo nono die Septembris.*

Here's an union of both Kingdomes, and that by act of Parli-  
ament, and the same Lawes to be used here as there, in omnibus.  
My Lords, That nothing might be left here for an exception,  
that is, that in treasons, felonies, and other capitall offences con-  
cerning life, the Irish Lawes are not the same as here. Therefore it  
is enacted in a Parliament held in England in the 24. yeeres of  
Edward the second (it is not in print neither, but is in the Par-  
liament booke) That the Lawes concerning life and member  
shall be the same in Ireland as in England.

And that no exception might yet remaine, this Parliament held  
in England the sixth yeere of Edward the third, inserted, and was  
afterwards put in the Irish Lawes, quoniam Anglice. This act is recoll'd in  
the Patent rolls of the sixth yeere of Edward the 3. part. 1. c. 10. d. 21.

The Irish therefore receiving their Lawes from hence, they  
send their Students at Law to the Inns of Court in England,  
where they receive their degree, and of them, and of the common  
Lawyers of this Kingdom, are the Judges made, and now in all  
The petty cases becommen from Ireland, so send forth, and so the  
Judges more learned in the Law, than those they had there.

It hath beene frequent in cases of difficulty there, to send some-  
times to the Parliament, sometimes to the King by advice from  
the Judges there, to send them resolutions of such doubts. Amongst  
many I'll cite your Goodships memory, because it is in  
a case of treason upon an Irish Law, which is full to this point.

By a Statute there made in the 9. yeere of Edward the fourth, there  
is provision made for such as upon suggestions are committed to  
prison for Treason, that the party committed, if he can procure

24. Compurgators, shall be bailed, and let out of prison.  
Two Citizens of Dublin were by a grand Jury presented so  
have committed treason. They desired the benefit of such Statute,  
that they might be let out of prison upon caution of their Com-  
purgators. The words of the Statute of the 9. yeere of Edward the  
4. in Ireland being obscure, the Judges there not being satisfied  
what to doe, sent the case over to the Q. desired the opinion of  
the Judges here, which was done accordingly. The Judges there  
sent over their opinion, which I have out of the Booke of Justice  
after, in one of the Judges confessed himself. The Judges there  
delivered opinion upon an Irish Statute in case of Treason.

If it be objected, That in this case the Judges there did not

judge upon the party; their opinions were only *ad informandum* of the Judges in Ireland; that the judgments belonged to the Judges there.

My Lords, with submission, this and the other Authorities prove that for which they were cited; that is, That no absurdity, no failure of Justice would ensue, if this great Judicatory should judge of Treason so made by an Irish Statute.

The common Law, the rule of Judging upon an Irish Seat, the pleas of the Crowne for things of life & death, are the same here and there. This is all that hath yet beene offered.

For the second point, That England hath not power of Judicature for things done in Ireland; My Lords, the constant practice of all ages proves the contrary.

Writs of error in Pleas of the Crowne, as well as in civil causes, have in all Kings reigns been brought hither, even in the inferior Courts of Westminster Hall upon judgments given in the Courts of Ireland. The practice is so frequent, & so well known, as that I shall send some of them to your Lordships; no precedent will (I beleve) be produced to your Lordships, that ever the case was remanded back againe into Ireland, because the question arose upon an Irish Statute or Custom.

*Object.*

But it will bee said, That writs of error are only upon a failure of justice in Ireland; and that suits cannot originally be commenced here for things done in Ireland, because the Kings writ runs not in Ireland.

*Answ.*

This might be a good plea in the Kings Bench, and inferior Courts at Westminster Hall, if the question is, whether it be so in Parliament. The Kings writs run not within the County Palatine of Chester and Durham, nor within the five Borses; neither did it in Wales before the union in Henry the eighth's time; after the Lawes of England were brought into Wales in King Edward the first's time, suits were not originally commenced in Westminster Hall for things done in them, yet this never excluded the Parliament suits for life, lands, and goods within those jurisdictions are determinable in Parliament, as well as in any other parts of the Realme.

Ireland, as appears by the Statute of the thirtieth yeere of Henry the third, before mentioned, is united to the Crowne of Engl.

By the Statute of the eight & twenty yeere of Henry the 6. in Ireland, it is declared in these words: That Ireland is the proper Dominion of England, and united to the Crowne of England, which Crowne of England is of it selfe, and by it selfe, fully, wholly, & entirely endowed with all power & authority sufficient to yeeld to the subjects of the same full and plenary remedy

in



In all debates and suits whatsoever, well to every first and

By the Statute of the 33. yeere of Henry the eighth, the first Chapter, when the Kings of England first assumed the title of King of Ireland, it is there enacted, That Ireland shall be held as a Crowne annexed & united to the Crowne of England: So that by the same reason, from this, that the Kings writ runs not in Ireland, it might aswell be held, that the Parliament runs not originally hold-plea of things done within the County Palatine of Chester and Durham, nor within the five Ports and Wales; Ireland is part of the Realme of England, as appears by those Statutes, as well as any of them.

This is made good by constant practice. In all the Parliament rolls, from the first to the last, there are receivers and tryers of petitions appointed for Ireland: For the Irish to come so farre with their petitions for justice, and the Parliament not to have cognizance, when from time to time they had in the beginning of the Parliament appointed receivers and tryers of them, is a thing not to be presumed.

An appeale in Ireland brought by William Lord Kilsno against John Fitz Thomas for treasonable words there spoken before any Judgement given in the case, there was removed into the Parliament in England, and there the defendant acquitted, as appears in the Parliament pleas of the two and twentieth yeere of Edward the first.

The suits for lands, offices, and goods, originally began here, are many; and if question grew upon matter in fact, a jury usually ordered to try it, and the verdict returned into Parliament, as in the case of one *Balliben*, in the Parliament of the five and thirtieth yeere of Edward the first. If doubt arose upon a matter tryable by Record, a writ went to the Officers in whose custody the Record remained, to certifie the Record, as was in the case of *Robert Bage* the same Parliament of the five and thirtieth yeere of Edward the first, where the writs went to the Treasurer and Barons of the Exchequer.

Sometimes they gave judgement here in Parliament, and commanded the Judges there in Ireland to doe execution, as in the great case of Partition betweene the copartners of the Earle Marshall, in the Parliament of the 33. yeere of Edward the first where the writ was awarded to the Treasurer of Ireland.

My Lords, The Lawes of Ireland were introduced by the Parliaments of England, as appears by three Acts of Parliament before cited.

It is of higher jurisdiction the *Liges*, then to judge by them. The Parliaments of England doe binde in Ireland, if Ireland be particularly mentioned, as is resolved in the Booke case of the

the first yeere of *Henr* the seventh, *Edw* the seventh Report, *Calvin* case, and by the Judges in Trinity Terme, in the three and thirtieth yeere of *Q*. *Elizabeth* : The Statute of the eighth yeere of *Edward* the fourth, the first Chapter in Ireland recites, that it was doubted amongst the Judges, whether all the English Statutes, though not naming Ireland, were in force there : if named, no doubt.

From King *Henry* the third his time downward to the eighth yeere of *Q*. *Elizabeth* (by which Statute it is made felony to carry sheepe from Ireland beyond seas) in almost all these Kings reignes there be Statutes made concerning Ireland.

The exercising of the Legislative power there over their lives and estates, is higher then of the Juditall in question. Vntill the nine and twentieth yeere of *Edward* the third, erroneous judgements given in Ireland, were determinable no where but in England : no, not in the Parliaments of Ireland, as it appears in the close rolls in the Tower, in the nine and twentieth yeere of *Edward* the third, memb. 12. Power to examine and reverse erroneous judgements in the Parliaments of Ireland is granted from hence : Writs of error lie in the Parliament here upon erroneous judgements after that time given in the Parliaments of Ireland, as appears in the Parliament rolls of the eighth yeere of *H*. the fifth, m. 701 in the case of the Prior of Lenthall. It is true, the case is not determined there, for it is the last thing that came into the Parliament, and could not be determined for want of time : but no exception at all is taken to the jurisdiction.

The Acts of Parliament made in Ireland have been confirmed in the Parliaments of England, as appears by the close rolls in the Tower, in the 41. yeere of *Edw*. the 3. memb. 30. do. 5. where the Parliament in Ireland, for the preservation of the Countrey from the Irish, who had almost destroyed it, made an Act, that all the land owners, that were English should reside upon their lands, or else they were to be forfeited : this was here confirmed.

In the Parliament of the 4. yeere of *H*. the 5. chap. 6. Acts of Parliament in Ireland are confirmed, and some privileges of the Peeres in the Parliaments there are regulated.

Power to repeal Irish Statutes, power to confirm them, cannot be by the Parliament here, if it hath not cognizance of their Parliaments, unless it be said, That the Parliament may doe it knowen or what.

Garney and Jersey are under the Kings subjection, but are not parcels of the Crown of England, but of the duchy of Normandy : they are not governed by the lawes of England, as Ireland is : and yet Parliaments in England have usually hold place of

of, and determined all causes concerning lands or goods. In the Parliament of 33. E. 1. there be *placita de Insula Ierneſey*; and so in the Parliament 14. E. 2. and so for Normandy and Gascoyne; and always as long as any part of France was in subjection to the Crown of England, there were at the beginning of Parliaments, receivers and tryers of petitions for those parts appointed.

I beleeve your Lordships will have no cases shewed of any plea to the jurisdiction of the Parliaments of England, in any thing done in any parts wheresoever in subjection to the Crown of England.

The last thing I shall offer to your Lordships is the case of 19. E. 1. in my Lord Dyer 306. and Iudge *Comptons* book of the jurisdiction of Courts, fol. 23. The opinion of both these books is, that an Irish Peere is not triable here. It's true, a Scottish or French Nobleman is triable here as a common person; the Law takes no notice of their Nobility, because those Countreys are not governed by the Lawes of England; but Ireland being governed by the same Lawes the Peeres there are triable according to the Law of England, one-ly *per pares*.

By the same reason the Earle of Strafford, not being a peere of Ireland, is not triable by the Peeres of Ireland; so that if he be not triable here, he is triable no where.

My Lords, In case there be a Treason and a Traitor within the Statute, and that he be not triable here for it in the ordinary way of judicatory, if that jurisdiction failes, this by way of Bill doth not; Attainders of Treason in Parliament are as legall, as usuall by Act of Parliament as by Iudgement.

I have now done with the Statutes of 25. E. 3. and 18. H. 6. My Lord of Strafford hath offended against both the Kingdomes, and is guilty of high Treason by the Lawes of both.

5 My Lords, In the fifth place I am come to the Treasons at the common Law, the endeavouring to subvert the fundamentall Lawes and government of the Kingdome, and to introduce an arbitrary and tyrannycall government.

In this I shall not at all labour to prove, that the endeavouring by words, counsells and actions to subvert the Lawes, is treason at the common Law, if there be any common Law treasons at all left? nothing treason, if this not, to make a Kingdome no Kingdome: take the politie and government away, England's but a peece of earth, wherein so many men have their commorancy and abode, without ranks or distinction of men, without property in any thing further  
E then



then possession, no Law to punish the murdering or robbing one another.

That of 33. H. 8. of introducing the Imperiall Law, sticks not with your Lordships: It was in case of an appeal to Rome, these appeals in cases of marriages, and other causes counted Ecclesiasticall; had beene frequent, had in most Kings reigns been tollarated; som in times of popery put a conscience upon them, the Statutes had limited the penalty to a *Premunire* onely: Neither was that a total subversion, only an appeal from the Ecclesiasticall Court here in a single cause to the Court at Rome; and if treason, or not, that case proves not; a treason may be punished as a felony, a felony as a trespassse, if his Majesty so please; the greater includes the lesser: In the case of *Premunire* in the Irish reports, that which is there declared to be treason, proceeded upon onely a *Premunire*.

The thing most considerable in this, is whether the treasons at common Law be taken away by the Stat. of 25. E. 3. 1. H. 4. or 1. Q. M. or any of them.

My Lords, to say they be taken away by the Stat. of 25. E. 3. is to speake against the direct words and scope of that Statute.

In it there's this clause, *That because many other like cases of treason might fall out which are not there declared, therefore it is enacted, That if any such case come before the Judges, they shall not proceed to judgement till the case be declared in Parliament, whether it ought to be adjudged treason, or not.*

These words, and the whole scope of that Statute shewes, that it was not the meaning to take away any treasons that were so before, but only to regulate the jurisdiction and manner of trial. Those that were single & certain Acts, as conspiring the Kings death, levying war, counterfeiting the money, or great Seal, killing a Judge, these are left to the ordinary Courts of Justice: the others not depending upon single Acts, but upon constructions and necessary inferences, they thought it unfit to give inferior Courts so great a latitude here, as too dangerous to the subject, those they strained to Parliaments.

This Statute was the security of the subject made with such wisdom as all the succeeding ages have approved it: It hath often passed through the furnace, but, like gold, hath lost little or nothing.

The Statute of 1. H. 4. cap. 10. is in these words, *whereas in the Parliament held the 21 yeare of Richard the 2. divers pains of treasons were ordained in so much, that no man did know how to behave himselfe, so doe say, or speake, It is accorded, that in no time to come any treason be adjudged otherwise then it was ordained by the Statute of 25. E. 3.*

It hath beene said, to what end is this Statute made, if it takes not away the common Law treasons remaining after the Statute of 25. E. 3.

There be two maine things which this Statute doth: First it takes away for the future all be treasons made by any Statute since 25. Ed. 3. to 1. Hen. 4. covenanted to that time: For, in respect that by another Act in that Parliament, the



the Statute of 21. R. 2. was repealed, it will not be denied, but that this Statute repeals more treasons then these of 21. R. 2. it repeals all Statute treasons but those in 25. E. 3. all other Statute treasons.

Secondly, It not only takes away the Statute treasons, but likewise the declared treasons in Parliam. after 25. E. 3. as to the future. After declaration in Parliam. the inferior Courts might judge these treasons; for the declaration of a treason in Parliam. after it was made, was sent to the inferior Courts, that *series quæritur* the like case fall out, they might proceed therein: the subject for the future was secured against the like, so that this Statute was of great use.

By the very words of it, it still refers all treasons to the provision of 25. E. 3. it leaves that entire and upon his old bottom.

The Statute of 1. R. M. cap. 1. saith *That no offences made treason by any Act of Parliament, shall thenceforth be taken or adjudged to be treason, but only as be declared and expressed to be treason by the Statute of 25. E. 3. concerning treason, or the declaration of treason and no others: And further provides that no pains of death, penaltie, or forfeiture, in any wise shall ensue for committing any treason, other then such as be in the Statute of 25. E. 3. ordained and provided; any Acts of Parliament or any declaration, or matter to the contrary, in any wise notwithstanding.*

By the first part of this Statute, only offences made Treason by Act of Parliament are taken away, the Common Law Treasons are no way touched: The words (*and no others*) refer still to offences made treason by Act of Parliament; they restrain not to the treasons onely particularly mentioned in the Statute of 25. E. 3. but leave that Statute entire as to the Common-law treason, as appears by the words immediately foregoing.

By the second part, for the pains and forfeitures of treasons, if it intend only the punishment of treason, or if it intend both treason and punishment, yet all is referred to the provision and ordinance of 25. E. 3. any Act of Parliament or other declaration or thing notwithstanding.

It saith not, other then such penalties or treasons as are expressed and declared in the Statute of 25. E. 3. that might perhaps have restrained it to those that are particularly mentioned: No, it refers all treasons to the general ordination and provision of that Statute, wherein the Common-Law-treasons are expressly kept on foot.

If it be askt what good this Statute doth if it take not away the Common-Law-treasons.

1. It takes away all the treasons made by Act of Parliament, not only since the first of H. 4. which were many, but all before 1. H. 4. even until 25. E. 3. by expresse words.

2. By expresse words, it takes away all declared treasons, if any such had been made in Parliam. these for the future are likewise taken away; so that whereas it might have been doubted, whether the Stat. of 1. H. 4. took away

fons but those of 21. & 22. R. 2. this clears it both for treasons made by Parliament, or declared in Parliament, even to the time of making the statute.

This is of great use, of great security to the subject; so that as to what shall be treason, and what not, the statute of 25. E. 3. remains entire; and so by consequence the treasons at the common Law.

Onely, my Lords, it may be doubted whether the manner of the Parliamentary proceedings be not altered by the statute of 1 H. 4. the 17. cap. and more fully in the Parliament roll, numb. 144. that is, whether since that statute the parliamentary power of declaration of treasons, whereby the inferiour Courts received jurisdiction; be not taken away and restrained onely to Bill, that so it might operate no further then to that particular contained in the Bill; that so the Parliamentary declarations for after times, should bee kept within the Parliament it selfe, & be extended no further. Since 1. H. 4. we have not found any such declarations made; but all Attainders of treason have beene by Bill.

If this be so, yet the common Law treasons still remaining, there is one and the same ground of reason and equity since 1. H. 4. for passing of a Bill of treason, as was before for declaring it without Bill.

Herein the *Legislative* power is not used against my Lord of Strafford in the Bill, its onely the jurisdiction of the Parliament.

But, my Lords, because that either through my mistaking of the true grounds and reasons of the Commons; or my not pressing of them with apt arguments and precedents of former times, or that perchance your Lordships from some other reasons and authorities, more swaying with your Lordships judgements, then these from them, may possible be of a contrary and dubious opinion concerning these treasons, either upon the Statutes of 25. E. 3. and 18. H. 6. or at the Common Law.

My Lords, if all these five should faile, they have given me further in command to declare to your Lordships some of their reasons, why they conceive that in this case the meere *Legislative* power may be exercised.

Their reasons are taken from these three grounds:

1. From the nature and quality of the offence.
2. From the frame & constitution of the Parliament wherein this law is made.
3. From practices and usages of former times.

The horridnesse of the offence in endeavouring the overthrowing the Laws and present government, hath bin fully opened to your Lordships heretofore.

The Parliament is the representation of the whole Kingdome; wherein the King as Head, your Lordships as the more noble, and the Commons the other members are knit together in one body politick: This dissolves the arteries and ligaments that hold the Body together, the Lawes: Hee that takes away the Lawes, takes not away the allegiance of one subject alone, but of the whole Kingdome.

It was made Treason by the statute of 13. *El.* for her time, to affirme, That the Lawes of the Realme doe not bind the descent of the Crowne; no Law, no descent at all.

No Law, no Peerage, no ranks or degrees of men; the same condition to all.

It's treason to kill a Iudge upon the Bench; this kills not *Indicem*, *s. d. Indic. um*: He that borrowed *Apelles*, and gave bond to returne again *Apelles* the Painter, sent him home after he had cut off his right hand; his bond was broken, *Apelles* was sent, but not the Painter. There be twelve men, but no law; there's never a Iudge amongst them.

It's felony to embezzill any one of the judicall records of the Kingdome; this at once sweepes them all away, and from all.

It's treason to counterfeit a twenty shil. peece; here's a counterfeiting of the Law, we canicall neither the counterfeit nor true coine our owne.

It's treason to counterfeit the great Seale for an acre of land, no property hereby is left to any land at all. Nothing treason now, either against King or Kingdome, no Law to punish it.

My Lords, If the question were asked in Westminster Hall, whether this were a crime punishable in Starre-chamber, or in the Kings Bench, by fine or imprisonment, they would say, it went higher: If whether felony, they would say, That's for an offence onely against the life or goods of some one or few persons: It would, I beleieve, be answered by the Iudges, as it was by the chief Justice *Thirning*, in 21. *R. 2.* That though he could judge the case treason there before him, yet if he were a Peere in Parliament, he would so adjudge it.

My Lords, if it be too big for those Courts, we hope its in the right way here.

2. The second consideration is from the frame and constitution of the Parliament; the Parliament is the great body politicke, it comprehends all from the King to the begger: if so, my Lords, as the naturall, so this body, it hath power over it selfe, and every one of the members for the preservation of the whole: Its both the Physitian and the patient: if the body be distempred, it hath power to open a veine to let out the corrupt blood for curing of it selfe; if one member be poysoned and gangrened, it hath power to cut it off for the preservation of the rest.

But, my Lords, it hath been often inculcated, that Law makers should imitate their supreme Law-giver, who commonly warnes before he strikes; the Law was promulged before the judgement of death for gathering of sticks; no Law, no transgression.

My Lords, to this the rule of Law is, *Frustra legis auxilium invocat, qui in legem committit*, from the *lex Talionis*, he that would not have had others to have law, why should hee have any himselfe? why should not that bee done to him, that himselfe would have done to others?



Itstruc, we give law to Hares and Decrs, because they be beasts of Chase; It was never accounted either cruelty or foul play to knock Foxes and Wolves on the head, as they can be found; because these be beasts of prey: The Warrener sets traps for Powlts and other Vermine, for preservation of the Warren.

Further, my Lords, most dangerous diseases, if not taken in time they kill: Errors in great things, as War and Marriage, they allow no time for repentance: It would have bin too late to make a law, when there had bin no law.

My Lords, for further answer to this objection, he hath offended a law, a law within, the endeavouring to subvert the lawes and politic of the State wherein he lived, which had so long, and with such faithfullnesse protected his Ancestry, himself, and his whole family: it was not *malum, quia prohibetur*, it was *malum in se*, against the dictates of the dullest conscience, against the light of nature; they, not having the law, were a law to themselves.

Besides this, he knew a law without, that the Parliament in cases of this nature had *potestatem vis a & necis*.

Nay, he well knew, that he offended the promulged and ordinary rules of law: Crimes against Law have been proved, have been confessed, so that the question is not *de culpa, sed de pena*, what degree of punishment those faults deserve: we must differ from him in opinion, that twenty felonies cannot make a treason, if in be meant of equality in the use of the Legislative power: for he that deserves death for one of these felonies alone, deserves a death more painfull and more ignominious for all together.

Every felony is punished with losse of life, lands, and goods; a felony may be aggravated with these circumstances, as that the Parliament with good reason may adde to the circumstances of punishment, as was done in the case of *John Hall*, in the Parliament of 1. H. 4. who for a barbarous murder committed upon the Duke of Gloucester, stifling him between two featherbeds at Calice, was adjudged to be hanged drawn, and quartered.

Batteries by Law are punishable only by fine and single damages to the party wounded.

In the Parliament held in 1. H. 4. cap. 6. one *Sauadge* committed a Battery upon one *Cheldur*, servant to Sir *John Brooke*, a knight of the Parliament for Sommerstshire; It was enacted, that he shall pay double damages, and stand convicted if he tender not himself by such a time: The manner of proceedings quickned, the penalty doubled, the circumstances were considered, it concerned the Common-wealth; it was Battery with breach of privilege of Parliament.

This made a perpetuall Act, no warning to the first offender; And in the Kings Bench, as appears by the book case of 9. H. 4. the first leas, double damages were recovered.

My



My Lords, in this of the Bill the offence is high and general, against the King and the Common-wealth; against all and the best of all.

If every Felony be losse of life, lands and goods, what is missever of the Legislative power, by addition of Ignominie in the death and disposall of the lands to the Crowne, the publicke patrimony of the Kingdome.

But it was hoped that your Lordships had no more skill in the Art of killing of men, than your worthy Ancestors.

My Lords this appeal from your selves to your Ancestors we admit of, although we do not admit of that from your Lordsh. to the Peeres of Ireland.

He hath appealed unto them; your Lordships will be pleased to hear what Judgement they have already given in the Case, that is the severall attenders of Treason in Parliament, after the Statute of 25. E. 3. for treasons not mentioned, without nor within that Statute, and those upon the first offenders warning given.

By the Statute of 25. E. 3. its reason to levy war against the King: *Gommes* and *Wylton* afterwards in Parliament in 1. R. 2. num. 38, 39. adjudged traitors for surrendring two severall Castles in France, only out of fear, without any compliaunce with the Enemy; this not within the Statute of 25. E. 3.

My Lords, in 3. R. 2. *John Imperiall* that came into England upon letters of safe conduct, as an Agent for the state of Genoa, sitting in the Evening before his door in Breadstreet, (as the words of the Records are) *paulo ante amis epulum*; *John Kirby* and another Citizen coming that way, casually *Kirby* trode upon his Toe: it being twilight; this grew to a quarrell, and the Ambassador was slaine; *Kirby* was indicted of high treason, the indictment findes all this, and that it was only done *se defendendo*, and without malice. The Judges, it being out of the Stat. of 25. E. 3. could not proceed; the Parliam. declared it treason, and judgment afterwards of high treason, ther's nothing can bring this within the Stat. of 25. E. 3. but it concerns the honor of the Nation, that the publick faith should be strictly kept: It might endanger the traffick of the kingdome; they made not a Law first, they made the first man an example. This is in the Parliament Roll, 3. R. 2. num. 18. and *Hilary Terme*, 3. R. 2. *Rot.* 30. in the Kings Bench, where judgment is given against him.

In 1. R. 2. *Tressilian*, and some others attainted of treason for delivering opinions in the subversion of the Law, and some others for plotting the like. My Lords, the case hath upon another occasion been opened to your Lordsh. only this is observable, That in the Parliam. of the 1. year of *Henry* the third, where all treasons are again reduced to the Stat. of 25. E. 3. these Attainders were by a particular Act confirmed and made good; that the memory thereof might be transmitted to succeeding ages: They stand good to this day; the offences there, as here, were the endeavoring the subversion of the lawes.

My

My Lords, after 1. *H. 4.* Sir *Iohn Mortimer* being committed to the Tower upon suspicion of treason, brake prison, and made an escape: This no way within any Statute, or any former Iudgement at common Law; for this, that is, for breaking the prison onely, and no other cause, in the Parliament held the 2. yeer of *H. 6.* he was attainted of high treason by Bill.

My Lords, poysoning is onely murder; yet one *Richard Coke* having put poyson into a pot of potage in the kitchen of the Bish. of Rochester whereof two persons dyed, he's attainted of Treason, & it was enacted that he should be boyled to death by the statute of 22. *H. 8. cap. 9.*

By the statute of 25. *H. 8. Elizabeth Barron*, the holy maid of *Kent*, for pretending revelations from God, that God was highly displeased with the King for being divorced from the Lady *Katherine*, and that in case he persisted in the separation, and should marry another, that he would not continue King above one month after; because this tended to the depriving of the lawfull succession to the Crowne, she is attainted of Treason.

In the Parliament 2. & 3. *H. 6. cap. 16.* the Lord Admiral of England was attainted of Treason for procuring the Kings Letters to both Houses of *Parliament*, to be good to the said Earle in such matters as hee should declare unto them, for saying that he would make the *Parliament* the blackest *Parliament* that ever was in England, endeavoring to marry the Lady *Elizabeth* the Kings sister, taking a bribe of *Sherrington*, accused of Treason, & thereupon consulting with Counsell for him, & some other crimes, none of them Treason, so cleerely within the statute of 25. *E. 3.* or any other statute as is the case in question.

My Lords, All these Attainders, for ought I know, are in force at this day; the statutes of the 1. *H. 4.* and the 1. *Qu. Mary.* although they were willing to make the Statute of the 25. yeare of *E. 3.* the Rule of the inferiour Courts, yet they left the Attainders in *Parliament* precedent to them selves untoucht, wherein the *Legislative* power had bin exercised. There's nothing nothing in them whence it can be gathered, but that they intended to leave it as free for the future.

My Lords, in all these Attainders, there were crimes and offences against the Law, they thought it not unjust, circumstances considered, to heighten and add to the degrees of punishment, and that upon the first offender.

My Lords, We receive, as just, the other Lawes and statutes made by these our Ancestors: They are the rules we go by in other cases, why should we differ from them in this alone?

These (my Lords) are in part those things which have satisfied the Commons in passing the Bill: but it is now left to the Judgement and Justice of your Lordships.

FINIS.